CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 120.

REUBEN M. MANLEY, EXECUTOR OF THE ESTATE OF GEORGE MANLEY, DECEASED, PLAINTIFF IN ERROR,

vs.

RICHARD A. PARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED JUNE 25, 1901.

(18,207.)

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1 In the Supreme Court of the State of Kansas.

Be it remembered, that on the 25th day of June, 1900, there was filed in the office of the clerk of the supreme court of the State of Kansas, a petition in error and transcript of the record from the district court of Atchison county which petition in error and transcript of the record are in words and figures as follows, to wit:

2-76 REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD C. PARK, Defendant in Error. } No. 11833.

Petition in Error and Transcript of Record.

Feb'y 6, 1901.—Pet. in error, by leave of court, detached and attached to case-made.

H. M. JACKSON,
Att'y — Def't in Error.

Filed Jun- 25 1900.

D. A. VALENTINE,
Clerk Supreme Court.

* * * * * * *

77 And be it further remembered, that on the said 25th day of June, 1900 the same being one of the regular judicial days of the January 1900 term of the supreme court of the State of Kansas, before the Honorable Frank Doster, chief justice, at his chambers in the city of Topeka, the following proceeding was had, and remains of record as follows to wit:

78 *Journal Entry of Stay.*

REUBEN M. MANLEY, Exct. of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } 11833.

Now on this 25th day of June A. D. 1900 comes on for hearing the application of the plaintiff in error for an order staying further proceedings in this case in the district court of Atchison county, Kansas, and the court having heard said application it is accordingly ordered that all proceedings for the enforcement of the judgment of the district court of said county in case No. 7833 Richard A. Park *vs.* Wm. H. Risk, executor of the estate of George Manley, deceased, R. M. Manley execu*otr* of said estate substituted defendant be stayed, and said district court proceed no further to enforce said judgment in said cause until the further order of this court, on the plaintiff in error executing with one or more sufficient sureties an undertaking in the sum of five hundred dollars, conditioned as pro-

cedure of 1889, said bond and sureties to be approved by the clerk of this court.

79 And afterwards on the 29th day of June, A. D. 1900 there was filed in the office of the clerk of the supreme court of the State of Kansas a bond for costs, which bond is in words and figures as follows, to wit:

80 In the Supreme Court of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error.
} Security for Costs.

We, and each of us, enter as security for all costs which may accrue to said defendant, in error, or to the officers of this court herein. And in default of payment by said plaintiffs in error of said costs, and after ten days' notice, we agree that execution may issue against our property for unpaid costs.

REUBEN M. MANLEY,
Executor of the Estate of George Manley, Deceased,
By L. F. BIRD, *His Attorney.*
J. A. SPAULDING.

(Endorsed on back:) No. 11,833. Reuben M. Manley, ex'r, *vs.* Richard A. Park Bond for costs. Approved & filed Jun- 29 1900 D. A. Valentine, clerk supreme court.

This bond is perfectly good.

L. F. BIRD,
Attorney for Plaintiffs in Error.

81 And on the same day there was filed in the office of the clerk of the supreme court of the State of Kansas, a bond for stay, which bond for stay with the endorsements thereon is in words and figures as follows, to wit:

82 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George M. Manley, Deceased. Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error.
} No. 11833.

Undertaking to Stay Proceedings.

Know all men by these presents, that we, Reuben M. Manley, executor of the estate of George Manley, deceased, of the county of Union, and State of New Jersey, as principal, and James A. Spalding of the county of Atchison and State of Kansas, as surety, are held and firmly bound unto Richard A. Park, in the full sum of

five hundred dollars ($500.00), to be paid to the said Richard A. Park, his heirs, successors, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves jointly and severally, and our heirs, successors, and assigns, firmly by these presents, upon the following conditions, to wit:

Whereas, on or about December 13th, A. D. 1897, in a suit pending in the district court of Atchison county, Kansas, between Richard A. Park, plaintiff, and William H. Risk, executor of the estate of George Manley, deceased, defendant, Reuben M. Manley, executor of the estate of George Manley, deceased, substituted defendant, a judgment was rendered against said defendant for the sum of $2463.07, with interest and costs, and whereas on June 2nd, 1900, the said district court of Atchison county, Kansas, refused to vacate and set aside said judgment, and refused to withdraw an execution issued on said judgment, and said defendant in said cause, as plaintiff in error, has duly prosecuted his proceedings in error in the supreme court of the State of Kansas, against the plaintiff in said cause, as defendant in error.

83 And whereas in said action, certain property attached therein, was ordered sold to satisfy said judgment.

Now the conditions of the above obligation is such that if said R. M. Manley, executor of the estate of George Manley, deceased, shall, during the possession of such property by him as plaintiff in error, not commit any waste or suffer any waste to be committed on said property, so attached and ordered sold, and if the said judgment be affirmed by the supreme court, that he will pay the value of the use and occupation of said property so attached and ordered sold, from the date of this undertaking until the delivery of said property pursuant to the judgment, and all costs, then the above obligation to be void, otherwise to remain in full force and effect.

Signed with our hands and dated this June 26th, 1900.

REUBEN M. MANLEY,
Executor of the Estate of George Manley, Deceased,
By L. F. BIRD, *His Attorney.*
JAMES A. SPALDING.

STATE OF KANSAS, } ss:
Atchison County, }

James A. Spalding, of lawful age, on his oath deposes and says that (seal) he is worth the full sum of one thousand dollars over and above all his debts, liabilities and exemptions.

JAMES A. SPALDING.

Subscribed and sworn to before me this 27th day of June, 1900.

G. F. CHAVES,
Notary Public.

My commission expires 28th August 1901.

To clerk:

The surety in this bond, James A. Spalding, is perfectly good and gives First National Bank of Atchison, Kansas as reference.

L. F. BIRD.

Endorsed on back: No. 11,833. Reuben M. Manley, ex. *vs.* Richard A. Park. Undertaking to stay proceedings. Approved. Filed Jun- 29 1900 D. A. Valentine, clerk supreme court.

84 And afterwards on the 8th day of August A. D. 1900 there was filed in the office of the clerk of the supreme court of the State of Kansas a case-made, which case-made with the endorsements thereon is in the words and figures as follows, to wit:

85 11833. Case-made. (Copy.) Filed Aug. 8, 1900 D. A. Valentine, clerk supreme court.

86 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error.
} No. —.

Petition in Error.

Filed Jun- 25, 1900. D. A. Valentine, clerk supreme court.

Comes now here the said plaintiff in error, Reuben M. Manley, executor of the estate of George Manley, deceased, and for his petition in error herein, against the said defendant in error, Richard A. Park, alleges; that heretofore and on, to wit: December 13th, 1897, the said defendant in error, as plaintiff below, recovered a judgment against the said plaintiff in error, defendant below, and order of sale on said judgment, for the sale of certain real property attached in said action as the property of the plaintiff in error, defendant below. That afterwards on June 2nd, 1900, the said district court of Atchison county, Kansas, refused to vacate or set aside said judgment and refused to order returned the order of sale issued on said judgment, and a full case-made of the proceedings of said district court is hereto attached and marked "Exhibit A."

And plaintiff in error alleges that there was error in the proceedings in the said district court of Atchison county, Kansas, in this, to wit:

First. That said district court erred in rendering judgment in favor of said defendant in error, plaintiff below, and against the said plaintiff in error, defendant below, for the sum of twenty-four hundred and sixty-three and seven one-hundredths dollars ($2463.07), with interest and costs of suit (case-made p. 38).

87 Second. That said district court erred in ordering the property attached in said action to be sold to pay said judgment (case-made pp. 38–39).

Third. That said district court erred in overruling the motion of plaintiff in error, defendant below, to vacate and set aside said judgment (case-made pp. 47 to 49).

Fourth. That said district court erred in overruling the motion

of plaintiff in error, defendant below, to withdraw the execution issued on said judgment. (case-madep p. 50 to 52.)

And said plaintiff in error asks that this honorable court examine into the doings and proceedings of the said district court of Atchison county, Kansas and reverse the same and order the said judgment set aside and vacated, and make such further order herein as plaintiff in error may be entitled to.

DAVID MARTIN AND
L. F. BIRD,
Attorneys for Plaintiff in Error.

88 (Copy.)

EXHIBIT A.

In the District Court of Atchison County, Kansas.

EXHIBIT A.

RICHARD A. PARK, Plaintiff,
vs.
WM. H. RISK, Executor of the Estate of George Manley, Deceased; R. M. Manley, Executor of said Estate, Substituted Defendant, Defendant.

Case-made.

Pleas before the honorable the district court of Atchison county, Kansas.

Be it remembered that heretofore and on, to wit: November, 4, 1895, Richard A. *Risk*, plaintiff, commenced his action in the district court of Atchison county, Kansas, against William H. Risk, executor of the estate of George Manley, deceased, defendant, by filing his petition, affidavit for attachment and precipe for summons and order of attachment, and which are in the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant.

Petition.

Plaintiff for his cause of action herein says:

1. That George Manley deceased at the county of Union in the State of New Jersey on or about the 30th day of December, 1891, being at the time of his death a resident and citizen of said county and State.

That at the time of his death the said George Manley, now de-

ceased was the owner and holder of shares of stock of the Kansas Trust and Banking Company, amounting to the sum of twenty-
89 seven thousand, five hundred ($27,500.00) dollars.

That the said George Manley died testate having made, published and acknowledged his will and testament and codicile thereto, therein and thereby designating and naming Reuben M. Manley and William H. Risk as executors of and trustees under said last will and testament.

That on or about the 22nd day of January, 1892, said will and codicile were duly admitted to probate in the orphans' court in and for said county of Union and State of New Jersey and letters testamentary were issued to William H. Risk, one of the said executors and trustees and thereon and on the said day William H. Risk duly accepted such trust and qualified as such executor and trustee and thereon and thereby said William H. Risk, as such executor of said estate became seized and possessed of all the property of the late George Manley, now deceased lying and being situate in the State of Kansas.

That in all proceedings in said orphans' court and in the office of the surrogate of the county of Union in the probate of said will and codicile, and the granting of letters testamentary thereon, the said orphans' court and the surrogate thereof were duly and legally authorized and empowered to take proof of the execution of said will and to make order of probate thereof and grant letters testamentary to said William H. Risk as such executor.

That under and by virtue of such ownership of such shares of stock by said George Manley and the making of said will and the probate thereof and the appointment of William H. Risk executor of the estate of George Manley deceased, said defendant William H. Risk, executor of the -state of George Manley deceased, became and is a stockholder of the said Kansas Trust and Banking Company, a corporation organized and incorporated under the laws of the State of Kansas other than for railroad, religious or charitable purposes, and as such executor of said estate is the owner and holder of shares of stock of said corporation amounting to the sum of twenty-
90 seven thousand five hundred ($27,500.00) dol-ars, and the plaintiff says that the said corporation is wholly insolvent and has no means or property out of or from which said indebtedness so due to the plaintiff as creditor, can be collected.

2. Plaintiff further says that on the 15th day of August, 1890 the Kansas Trust and Banking Company, a corporation duly incorporated and organized under the laws of the State of Kansas became and was indebted to one, Richard Berrill, in the sum of four hundred dollars which the said corporation promi*n*sed and agreed to pay on 15th day of August, 1895, by its certain debenture bond, and concurrently therewith promised and agreed to pay 7 % interest per annum thereon, payable semi-annually, upon said sum, b*u* its certain interest coupons attached to said bond; that said corporation paid the interest upon said bond up to and including the 15th day of February, 1893 and th*a* said bond with interest thereon from February 15th, 1893, is wholly due and unpaid, except the

n of $20.00, paid thereon on the 22nd day of March, 1894, and the ther sum of ($20.00) twenty dol-ars paid thereon on the 5th day September, 1895, which bond was by said — duly assigned and nsferred to the plaintiff on the 15th day of October, 1895, a copy which bond and of one of said coupons and of the assignment reof, is hereto attached, *am*rked "Exhibit A" and made a part reof.

And further plaintiff says that he is the owner and holder of said nd and that he is a credotor of said The Kansas Trust and Bank- g Company, a corporation, to the extent and amount of said bond s the payment thereon being the sum of four hundred dollars, with erest at the rate of 7 *% per cent.* per annum thereon, from Feb'y th 1893, less the two said credits of twenty dollars. ($20.00) each, dorsed thereon.

Plaintiff further says that said corproation has suspended business more than one year prior to the filing of this petition and has not ice or during that time en*a*ged in the transaction of any business, natever.

3. Plaintiff for a further cause of action herein says, that he here adopts the count of clause hereof numbered "1" as fully and in all respects as if copied and set out herein as a part reof, and further says:

That on the 15th day of July, 1892, the Kansas Trust and Bank- g Company, a corporation duly incorporated and organized under e laws of the State of Kansas, was indebted to one, Adelaide C. ark in the sum of six hundred dollars, which said corporation by s bond and interest coupons thereto attached promised and agree- pay, together with interest upon said principal sum at the rate of per cent. per annum: that said corporation paid the interest upon id bond up to and including the 15th day of January 1893 and at said bond and all interest thereon is wholly due and unpaid, xcept there has been paid upon said bond, payments as follows, to it: on March 22nd, 1894, the sum of $30.00 *dollars*, and on Sep- mber 5th, 1895 the sum of 30.00 dollars.

That on the 15th day of October 1895 the said Adelaide C. Park old, assigned and transferred to this plaintiff the said bond, by in- orsement in writing thereon, of which bond and of one of the un- aid coupons and said assignment a copy is hereto attached marked Exhibit B" and — a part hereof.

Plaintiff further says that to the extent and amount so due upon aid bond, he is a creditor of said corporation, and that said corpo- ation has for more than one year next before the filing of this pe- ition suspended business and ceased for and during that time to ransact any business whatever, and said corporation is wholly in- olvent and has no means or property out of or from which said ndebtedness can be collected by the plaintiff as a creditor of said orporation.

That under and by virtue of such ownership of said shares of tock by said George Manley and the making of said will and the robate thereof and the appointment of William H. Risk, executor f the estate of George Manley, deceased, said defendant Wil-

92 liam H. Risk, executor of the estate of George Manley, deceased is a stockholder of said corporation and as such executor of said estate is the owner and holder of stock of said corporation amounting to the sum of twenty-seven thousand five hundred ($27,500.00) dollars, and the plaintiff says that said corporation is wholly insolvent and has no means or property out of or from which said indebtedness so due to the plaintiff as such creditor can be collected.

Plaintiff for a further cause of action says that he here adopts the count or clause hereof numbered "1" as fully and in all respects as if the same were copied and set out herein, as a part hereof, and further says,

That on the 16th day of September 1889 the Kansas Trust and Banking Company, a corporation duly incorporated and organized under the laws of the State of Kansas, was indebted to this plaintiff R. A. Park in the sum of seven hundred dollars, which said corporation by its certain bond and interest coupons thereto attached, promised to pay together with interest upon said principal sum at the rate of 7 per cent. per annum. That said corporation paid the interest upon said bond up to and including the 15th day of September, 1892 and that said bond and all interest thereon is wholly due and unpaid, except that there has been paid upon said bond, payments as follows, to wit: On March 22nd, 1894, the sum of $35.00 *dollars* and on September 5th, 1895, the sum of 35.00 dollars. A copy of which bond and of one of said coupons, is hereto attached marked "Exhibit C" and made a part thereof.

Plaintiff further says that to the extent and the amount so due upon said bond he is a creditor of said corporation, and that said corporation has for more than one *than one* year next before the filing of this petition suspended business and ceased for and during that time to transact any business whatever, and said corporation is wholly insolvent and has no means or property out of which said indebtedness can be collected by this plaintiff as such creditor of said corporation.

That under and by virtue of such ownership of said shares of stock by the said George Manley and the making of said will and the probate thereof and the appointment of William H. Risk,
93 executor of the estate of George Manley, deceased, said defendant William H. Risk, executor of the estate of George Manley, deceased is a stockholder of said corporation and as such executor of said estate is the owner and holder of stock of said corporation amounting to the sum of twenty-seven thousand, five hundred ($27,500.00) dollars, and plaintiff says that said corporation is wholly insolvent and has no means or property out of or from which said indebtedness so due to the plaintiff as such creditor can be collected.

5. Plaintiff for a further cause of action herein says that he here adopts the count and clause hereof numbered "1" as fully and in all respects as as if the same were copied and set out herein, as a part hereof, and further says—

That on the 16th dau of September 1889 the Kansas Trust and

Banking Company, a corporation duly incorporated and organized under the laws of the State of Kansas, was indebted to this plaintiff R. A. Park in the sum of three hundred dollars which said corporation by its bond and interest coupons thereto attached promised and agreed to pay, together with interest upon said principal sum at the rate of 7 per cent. per annum.

That said corporation paid the interest upon said bond up to and including the 15th day of September, 1892, and that said bond and all interests thereon *is* wholly due and unpaid, except that there *has* been paid upon said bond, payments as follows, to wit—$15.00 *dollars* paid March 22nd, 1895, and the further sum of $15.00 paid September 5th, 1895, a copy of which bond and of one of the said coupons is hereto attached marked "Exhibit D" and made a part thereof.

Plaintiff further says that to the extent and amount so due upon said bond he is a creditor of said corporation, and that said corporation has for more than one year next before the filing of this petition suspended business and ceased for and during that time to transact any business whatever, and said corporation is wholly insolvent and has no means or property out of or from which said indebtedness can be collected by this plaintiff as such creditor of said corporation.

94 That under and by virtue of such ownership of said shares of stock by said George Manley and the making of said will and the probate thereof and the appointment of William H. Risk, executor of the -state of George Manley, deceased, said defendant William H. Risk, executor of the estate of George Manley, deceased, is a stockholder of such corporation and as such executor of said estate is the owner and holder of stock of said corporation amounting to the sum of twenty-seven thousand fi*b*e hundred ($27,500.00) dollars, and the plaintiff says that said corporation is wholly insolvent and has no means or property out of or from which said indebtedness so due to this plaintiff as such creditor, can be collected.

Wherefore, plaintiff prays judgment against the said defendant for the sum of two thousand ($2,000.00) — with 7 per cent. interest per annum from Sept. 15th, 1892, on $1000.00 and from February 15th, 1893 on $400.00 and on $600.00 from January 15th, 1893, less payments thereon as follows, to wit $10000 (in payments) paid March 22nd, 1894, and $100.00 (in payments) paid September 5th, 1895 and also for costs of suit in this behalf laid out and expended.

(Signed) JACKSON & JACKSON,
Attorneys for the Plaintiff.

Precipe.

Clerk:

Please issue summons and order of attachment in the above-entitled cause, endorsed, action for the recovery of money, amount claimed, $2000.00 with 7 per cent. interest per annum from September 15th, 1892 on $1000. and on $400.00 from February 15th, 1893

and on $600.00 from January 15th, 1893 subject to credits as follows, $100. in payments of date March 22nd, 1894, and $100.00 in payments of date September 5th, 1895, and costs of suit not to exceed fifty ($50.00) —.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

95 Number 259.

I, J. L. Coplan, cashier of the First National Bank of Atchison, Kansas hereby certify that as security for the due payment of the debenture bond of the Kansas Trust and Banking Company of Atchison, Kansas, hereto attached, there are deposited in this bank mortgages on real estate equal in amount to the amount of said bond. Said mortgages are not to be removed from the custody of this bank until the said bond is paid and evidence of such payment is furnished to said bank: Except on the condition that the said The Kansas Trust and Banking Company shall deposit in place thereof other mortgages equal in amount to those removed, or cash, at the option of the said The Kansas Trust and Banking Company.

In witness whereof I have hereunto set my hand as such cashier, this 15th day of August, 1890.

(Signed) J. L. COPLAN, *Cashier.*

EXHIBIT "A."

The Kansas Banking and Trust Company of Atchison, Kansas for value received is indebted unto the registered holder hereof, if registered otherwise to Richard Berrill in the sum of four hundred dollars which shall be due on the 15th day of August, 1895.

This bond draws interest at the rate of seven per cent. per annum payable semi-annually according to the interest coupons hereto attached. Principal and interest are payable at maturity at the office of the Kansas Trust and Banking Company in Atchison, Kansas. This bond is secured by mortgages on real estate deposited with the First National Bank of Atchison, Kansas, in trust in accordance with the certificate of said bank hereto attached and without which certificate this bond is not valid.

In witnes- whereof the corporate seal of the Kansas Trust and Banking Company of Atchison, Kansas has been hereto attached this 15th day of August, 1890, and this bond has been signed by E. G. Armsby, secretary of,

THE KANSAS TRUST AND BANKING COMPANY.

96 $14.00. Fourteen dollars will be paid to Richard Berrill or bearer on the 15th day of August, 1893 on presentation hereof at the office of the Kansas Trust and Banking Company in Atchison, Kansas.

This coupon is for six months' interest on debenture bond N-. 259. issued by the said The Kansas Trust and Banking Company.

(Signed) E. C. ARMSBY, *Sec'y.*

Number 348.

I, S. A. Frazier, cashier of the First National Bank of Atchison, Kansas, hereby certify that as security for the due payment of the debenture bond of the Kansas Trust and Banking Company of Atchison Kansas, hereto attached, there are deposited in this bank mortgages on real estate equal in amount to the amount of said bond. Said mortgages are not to be removed from the custody of this bank until the said bond is paid and evidence of such payment is furnished to said bank: Except on the condition that the said The Kansas Trust and Banking Company shall deposit in place thereof other mortgages equal in amount to those removed, or cash, at the option of the said The Kansas Trust and Banking Company.

In witness whereof I have hereunto set my hand as such cashier, this 15th, day of July, 1892.

(Signed) S. A. FRAZIER, *Cashier.*

The Kansas Trust and Banking Company of Atchison Kansas, for value received is indebted unto the registered holder hereof, if registered, otherwise to Adelaide C. Park, in the sum of six hundred dollars which shall be due on the 15th day of July, 1895.

This bond draws interest at the rate of seven per cent. per annum payable semi-annually according to the interest coupons hereto attached. Principal and interest are payable at maturity at
97 the office of the Kansas Trust and Banking Company in Atchison, Kansas.

This bond is secured by mortgages on real estate deposited with the First National Bank of Atchison, Kansas, in trust in accordance with the certificate of said bank hereto attached and without which certificate this bond is not valid.

In witness whereof, the corporate seal of the Kansas Trust and Banking Company of Atchison, Kansas has been hereto attached on this 15th day of July, 1892, and this bond has been signed by

E. G. ARMSBY,

Secretary of the Kansas Trust and Banking Company.

$21.00. Twenty-one dollars will be paid to Adelia C. Park, or bearer on the 15th day of July 1893, on presentation hereof at the office of the Kansas Trust and Banking Company, in Atchison, Kansas. This coupon is for six months' interest on debenture bond No. 348, issued by the said The Kansas Trust and Banking Company.

(Signed) ADELIADE C. PARK.

Number 100.

I, S. A. Frazier, ass't cashier of the First National Bank of Atchison, Kansas hereby certify that as security for the due payment of the debenture bond of the Kansas Trust and Banking Company of Atchison, Kansas, hereto attached, there are deposited in this bank mortgages on real estate equal in amount to the amount of said bond. Said mortgages are not to be removed from the custody of this bank until the said bond is paid and evidence of such payment

is furnished to said bank: Except on the condition that the
98 said The Kansas Trust and Banking Company shall deposit in place thereof other mortgages equal in amount to those removed, or cash, at the option of said The Kansas Trust and Banking Company.

In witness whereof I have hereunto set my hand as such assistant cashier, this sixteenth day of September, 1889.

(Signed) S. A. FRAZIER,
Ass't Cashier.

The Kansas Trust and Banking Company of Atchison, Kansas for value received is indebted unto the registered holder hereof, if registered, otherwise to R. A. Park, in the sum of seven hundred dollars, which shall be due on the 15th day of September, 1894.

This bond draws interest at the rate of — per cent. per annum payable semi-annually according to the interest coupons hereto attached. Principal and interest are payable at maturity at the office of the Kansas Trust and Banking Company in Atchison Kansas. This bond is secured by mortgages on real estate deposited with the First National Bank of Atchison Kansas, in trust in accordance with the certificate of said bank hereto attached without which certificate this bond is not valid.

In witness whereof the corporate seal of the Kansas Trust and Banking Company of Atchison, Kansas has been hereto attached this 16th day of September 1889, and this bond has been signed by E. G. Armsby, sec'y of

THE KANSAS TRUST AND BANKING COMPANY.

$24.50. Twenty-four and fifty one-hundredths dollars will be paid to R. A. Park, or bearer on the fifteenth day of March, 1893 on presentation hereof at the office of the Kansas Trust and Banking Company, in Atchison, Kansas. This coupon is for six months' interest on debenture bond No. 188 issued by the said The Kansas Trust and Banking Company.

(Signed) E. G. ARMSBY, *Sec'y.*

99 Number 190.

I, S. A. Frazier, assistant cashier of the First National Bank of Atchison, Kansas hereby certify that as security for the due payment of the debenture bond of the Kansas Trust and Banking Company of Atchison, Kansas, hereto attached, there are deposited in this bank mortgages on real estate equal in amount to the amount of the said bond. Said mortgages are not to be removed from the custody of this bank until the said bond is paid and evidence of such payment is furnished to said bank: Except on the condition that the said The Kansas Trust and Banking Company shall deposit in place thereof other mortgages equal in amount to those removed, or cash, at the option of said The Kansas Trust and Banking Company.

In witness whereof I have hereunto set my hand as such assistant cashier this sixteenth day of September, 1889.

(Signed) S. A. FRAZIER,
Ass't Cashier.

The Kansas Trust and Banking Company of Atchison, Kansas for value received is indebted unto the registered holder hereof, if registered otherwise to R. A. Park, in the sum of three hundred dollars, which shall be due on the fifteenth day of September, 1894.

This bond draws interest at the rate of seven per cent. per annum payable semi-annually according to the interest coupons hereto attached. Principal and interest are payable at maturity at the office of the Kansas Trust and Banking Company in Atchison, Kansas. This bond is secured by mortgages on real estate deposited with the First National Bank of Atchison, Kansas in trust in accordance with the certificate of said bank hereto attached without which certificate this bond is not valid.

In witness whereof the corporate seal of the Kansas Trust and Banking Company of Atchison Kansas, has been hereto attached this sixteenth day of September, 1889 and this bond has been signed by E. G. Armsby, secretary of

THE KANSAS TRUST AND BANKING COMPANY.

100 $10.50. Ten and fifty one-hundredths dollars will be paid to R. A. Park or bearer on the fifteenth day of March, 1893 on presentation hereof at the office of the Kansas Trust and Banking Company in Atchison Kansas. This coupon is for six months' interest on debenture bond No. 190—issued by the said The Kansas Trust and Banking Company.

(Signed) E. G. ARMSBY, *Sec'y.*

(EXHIBIT "B.")

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased.

Affidavit for Attachment.

STATE OF KANSAS, } ss:
Atchison County, }

Richard A. Park, being duly sworn upon his oath says that he is the plaintiff in the above-entitled action: that he is about to commence the above-entitled action in said court and against the said defendant for the recovery of two thousand ($2000) dollars with seven (7) per cent. interest per annum upon one thousand ($100–) — thereof from September 15th, 1892 and with 7 per cent. interest upon

four hundred ($400) dollars thereof from February 15th, 1893 and with 7 per cent. interest per annum upon six hundred ($600) dollars thereof from January 15th, 1893 less one hundred ($100.00) dollars, paid March 22nd, 1894 and one hundred ($100) dollars, paid September 5th, 1895: that said defendant is justly indebted to plaintiff in said sum and interest less said credits, upon the liability of said defendant as a stockholder and owner of stock to the extent and amount of twenty-seven thousand, five hundred ($27,500.00) dollars in the Kansas Trust and Banking Company, a cor-
101 poration, now insolvent and for more than one year last past dissolved and not engaged in business and which corporation is indebted to the plaintiff Richard A. Park, on account of four certain bonds described as follows; one bond dated September 16th, 1889, for seven hundred ($700) —, one bond dated September 16th, 1889, for three hundred ($300) dollars, both payable to the plaintiff, interest upon which two bonds has been paid to September 15th, 1892.

One bond dated *dated* August 15th, 1890, for four hundred ($400) dollars, payable to Richard Berrill, and assigned to plaintiff, interest paid to February 15th, 1893. One bond dated July 15th, 1892, for six hundred ($600) dollars, interest upon which is paid to January 15th, 1893, payable to Adelia C. Park, and assigned to plaintiff.

The first three of said bonds being due and payable five years after date, and the fourth of said bonds being due and payable three years after date, all said bonds bearing seven (7) per cent. interest per annum, and the last two of said bonds duly sold, assigned and transferred to the plaintiff, with a credit upon said first-mentioned bond of twenty ($35.00) dollars, and upon the second of said bonds a credit of fifteen ($15.00) dollars; upon the third-mentioned bond of twenty ($20.00) dollars, and upon the fourth-mentioned bond of thirty ($30.00) dollars, all which credits and payments were made March 22nd, 1894: And with further credits upon said first-mentioned bond of thirty-five ($35.00) dollars: upon said second-mentioned bond of fifteen (15) dollars, upon said third-mentioned bond of twenty ($20.00) dollars and upon said fourth-mentioned bond of thirty ($30) dollars, which last-mentioned payments and credits were made September 5th, 1895; that said claim is just, is due and is wholly unpaid.

That affiant believes that he as such plaintiff ought to recover of said defendant in said action said sum of two thousand ($2000) dollars, with interest upon one thousand ($1,000) dollars thereof, being upon said first-two-mentioned bonds from September 15th, 1892 and with interest upon four hundred ($400.00) dollars from February 15th, 1893 and with interest upon six hundred ($600.00) dollars thereof, from January 15th, 1893, said interest being com-
102 puted at seven (7) per cent. per annum, less said two credits upon each of said bonds, being in the aggregate two hundred ($200.00) dollars.

That said defendant is a non-resident of the State of Kansas; and that said claim and demand about to be sued for in the above-entitled

action is a debt and demand upon contract and arose wholly within the limits of the State of Kansas.

And further affiant saith not.

RICHARD A. PARK.

Subscribed in my presence and sworn to before me this 4th day of November, 1895,

In witness whereof I have hereunto subscribed my name and seal at Atchison, Kansas, the day and year last above written.

(Signed) J. N. COX,
Clerk of Dist. Court.

Endorsed on the back: R. A. Park *vs.* Wm. H. Risk, executor of the estate of George Manley. Petition and affidavit for attachment, Filed Nov. 4, 1895, J. N. Cox, clerk.

103 Thereafter and on to wit: November 4, 1895, summons was issued in said cause, directed to the sheriff of Atchison county, Kansas for execution and return, and was by said sheriff returned "*mon est*" on November, 8, 1895, and said summons is in the words and figures following to wit:

THE STATE OF KANSAS, } *ss*:
County of Atchison, }

To the sheriff of said county of Atchison, Greeting:

You are hereby commanded to notify William H. Risk, executor of the estate of George Manley deceased, that he has been sued by Richard A. Park, in the district court within and for said county of Atchison and that unless he answer by the 4th, day of December, A. D. 1895, the petition of said Richard A. Park, filed against said William H. Risk, executor of the estate of George Manley deceased, in the cl-rk's office of said court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on or before the 14th, day of November, A. D. 1895.

Witness my hand and seal of said court at the city of Atchison, this 14th day of November, A. D. 1895.

(Signed) J. N. COX, *Clerk.*

Suit brought for the recovery of money. Amount *cal*imed, $2000.00 with interest at 7 per cent. per annum thereon, and upon $400.00 thereof, from Feb'y 15th, 1893 and upon $600. thereof from January 15th, 1893, and upon $1000.00 thereof, from Sept. 15, 1892 less credits of $100.00 of March 22nd, 1894 and $100.00 of September, 5th, 1895, with interest from the — day of —— A. D. 189–, at the rate of — per cent. per —.

(Signed) JACKSON & JACKSON,
Attorney-for Plaintiff.

104 And was endorsed on the back as follows, to wit:—
No. 7833, docket 14, page 40. Summons, Richard A. Park

vs. Wm. H. Risk, ex. etc., issued Nov. 4, A. D. 1895. Returnable Nov. 14, A. D. 1895. Filed Nov. 8, 1895, J. N. Cox, clerk, Jackson & Jackson, attorneys for plaintiff.

And the return of the sheriff endorsed thereon is as follows, to wit:

"Officer's Return."

I received this summons on the 4th day of November, 1895, at ten (10) o'clock a. m., and said William H. Risk, executor of the estate of George Manley deceased, not found in my county, this 8th, day of November, 1895.

(Signed) M. E. LARKIN,
Sheriff of Atchison County.

Thereafter and on to wit: November, 4, 1895, and order of attachment was issued in said cause, directed to the sheriff of Atchison county, Kansas, for execution and return, and was by said sheriff returned on November, 8, 1895, and said order of attachment is in the words and figures following, to wit:

Order of Attachment.

UNITED STATES OF AMERICA, }
State of Kansas, County of Atchison, } ss:

To the sheriff of said county, Greeting:

Whereas: Richard A. Park, plaintiff has this day, on the necessary affidavit being filed, obtained an order of attachment against William H. Risk, executor of the estate of George Manley deceased,

Defendant in a certain action now pending in the district court within and for said county of Atchison, wherein the said Richard A. Park is plaintiff, and the said William H. Risk, executor of the estate of George Manley deceased is, defendant to recover of the said defendant the sum of two thousand dollars with 7 % interest per annum thereon, but upon $400.00 thereof from Feb'y, 15th, 1893, and upon $600.00 thereof from January 15th, 1893, and upon $100.00 thereof from September 15th, 1892, less a credit of $100.00 paid March 22nd, 1894, and a credit for $100.00 paid Sept., 5th, 1895.

105

Now therefore, this is to command you to attach the lands, tenements, goods, chattles, stocks, and interest in stocks, rights, credits, moneys, and effects of the said William H. Risk, executor of the estate of George Manley, deceased, in your county, not exempt by law from being applied to the plaintiff's claim or so much thereof, as will satisfy the said plaintiff's said claim as above stated, and the probate cost of this suit not exceeding fifty (50) dollars, and of this order and your proceedings thereon, do you make due return on the 14th day of November, A. D. 1895.

Witness my hand and seal of said court, at my office in the city of Atchison, Kansas, this 4th day of November, A. D. 1895.

[L. S.] (Signed) J. N. COX, *Clerk.*

And said order of attachment was endorsed on the back as follows to wit: No. 7833, Order of at-chment, Richard A. Park, *vs.* Wm. H. Risk, ex., etc., issued Nov. 4, A. D. 1895, Returnable Nov. 14, A. D. 1895. Filed Nov. 8th, 1895, J. N. Cox, clerk, Jackson & Jackson, attorney- for plaintiff.

And the return of the sheriff on said order of attachment is in the words and figures following, to wit:

Attachment Return on Real Estate.

I received the within, and hereto annexed order of attachment on the 4th day of November, A. D. 1895, at ten (10) o'clock a. m. of that day executed the same in my county of Atchison,
106 State of Kansas, on the 4th day of November, A. D. 1895, at 2.45 p. m. of that day by attaching the following-described real property, lying and being in said Atchison county, State of Kansas, as the property of said defendant, William H. Risk, executor of the estate of George Manley deceased to wit:

The northeast ¼ of section twenty-five (25), township five (5) of range twenty (20), subject to a former levy and appraisement, under attachment in case No. 7832 in favor of Richard A. Park, by going to said property and there declaring that by virtue of said order of attachment, I attached the said property at the suit of the plaintiff, and by leaving in the most conspicuous place, upon said attached property a true and certified copy of said order of attachment, there being no occupant upon said property, of the within on this 4th day of November, A. D. 1895.

(Signed) M. E. LARKIN, *Sheriff.*

Thereafter and on to wit: November 25, 1895, affidavit for publication was filed in said cause, and same is in the words and figures following, to wit:

In the District Court of Atchison County, Kansas.

R. A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant. } No. 7833.

STATE OF KANSAS, } *ss:*
Atchison County, }

H. M. Jackson being duly sworn upon his oath says that he is one of the plaintiff's attorneys in the above-entitled cause: that the defendant is a non-resident of the State of Kansas and that personal service of summons cannot be made upon said defendant
107 within the State of Kansas, and that plaintiff with due diligence is unable to make personal service of summons upon said defendant within the State of Kansas.

That said action is brought against a non-resident of the State of

Kansas, having in this State property sought to be taken by attachment and to *eb* appropriated for the payment of the indebtedness due from defendant to plaintiff.

(Signed) H. M. JACKSON.

Subscribed and sworn to before me this 25th day of November, 1895.

[L. S.] In witness whereof I have hereto subscribed my name and affixed my notarial seal at Atchison Kansas, the day and year last above written.

(Signed) Z. E. JACKSON,
Notary Public.

My commission expires Dec. 29th, 1898.

Endorsed on the back: No. 7833. *E* R. A. Park *vs.* William H. Risk, executor of the estate of Geo. Manley, deceased. Affidavit for publication of notice. Filed Nov. 25th, 1895, J. N. Cox, clerk.

Thereafter and on to wit: February, 3, 1896, proof of publication was filed in said court and cause, and same is in the words and figures following, to wit:

Proof of Publication of Notice.

Notice.

To William H. Risk, executor of the estate of George Manley, deceased:

You are hereby notified that R. A. Park as plaintiff, has filed his petition in the district court of Atchison county, State of Kansas, against you as defendant and that you, William H. Risk executor of the estate of George Manley, deceased, have been sued and must answer the petition filed by said R. A. Park, as plaintiff, on or before the 14th day of January, 1896, or the petition will be taken as true and judgment, for the sum of two thousand dollars with interest thereon at 7 per cent. per annum from the 15th day of Feb-
108 ruary, 1893, less one credit of ($100.00) *dollars* made March 22nd, 1894, and one credit of ($100.00) *dollars* made September 5th, 1895, and an order of sale of the following-described property attached in said cause, to wit:

The northeast quarter of section twenty-five (25) township five (5) of range twenty (20) lying and being situate in Atchison county State of Kansas, will be rendered accordingly.

R. A. PARK, *Plaintiff,*
By JACKSON & JACKSON, *Attorneys.*

(7833) 11 30 23t.

STATE OF KANSAS, }
County of Atchison, } *ss:*

W. T. Snider being duly sworn upon oath states that he *si* chief clerk of the Daily Champion, a daily newspaper, printed and pub-

lished in said Atchison county, and of general circulation therein, and which has been so printed and published in said Atchison county continuously and uninterruptedly for a period of fifty-two consecutive weeks last preceding the date of the first publication of the annexed notice; that the notice, a true copy of which is hereto annexed, and made a part hereof, was published in said daily newspaper for 23 consecutive issues, the first publication thereof being on the 14th day of January A. D. 1896, and in each and every issue of said weekly newspaper between those dates, both inclusive.

(Signed) W. T. SNIDER.

[L. S.] Subscribed in my presence, and sworn to before me, this 24th day of Jan'y, A. D. 1896.

(Signed) R. B. DRURY,
Notary Public.

My term expires March 5th, 1899.

109 Endorsed on the back: No. 7833. R. A. Park *vs.* Wm. H. Risk, executor etc., Proof of publication of notice. Filed Feb. 3, 1896. J. N. Cox, clerk.

110 Thereafter and on to wit January 14, 1896, the defendant filed a demur-er in said cause, and same is in the words and figures following, to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant. } No. 7833.

Dem-rrer.

Defendant, William H. Risk, executor of the estate of George Manley, deceased, here now files this his demurrer to the petition of the plaintiff, heretofore filed in the above-entitled cause for that it appears upon the face of the said petition;

1st. That the court has no jurisdiction of the person of the defendant, or the subject of the action.

2nd. That several causes of action are improperly joined.

3rd. That the petition does not state facts sufficient to constitute a cause of action.

(Signed) BUCKNER, BIRD & LAKE,
Attorneys for Defendant.

Endorsed on the back: No. 7833. Richard A. Park, plaintiff, *vs.* Wm. H. Risk, executor, defendant. Demurrer, Filed Jan. 14, 1896, J. N. Cox, clerk.

111 Thereafter and on, to wit: March 29, 1897, plaintiff filed motion to continue cause against R. M. Manley, as executor, and the same is in the words and figures following, to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant.

Motion for order to continue said cause against R. M. Manley, as executor of the estate of George Manley, deceased, as successor of William H. Risk, as such executor.

Comes now the said plaintiff and suggests to the court that William H. Risk, executor of the estate of George Manley deceased, on or about the 23rd, day of January, A. D. 1897 resigned and surrendered his trust as such executor and trustee of said estate and there-on R. M. Manley was appointed and duly qualified as executor and trustee of said estate of George Manley deceased, which resignation, surrender, order of appointment were each and all made by the orphans' court of Union county of the State of New Jersey, of which county said George Manley was a resident at the time of his decease, and in which court the will of said George Manley was duly probated, and which court had jurisdiction to receive and accept the resignation of said William H. Risk as such executor and trustee and to appoint the said R. M. Manley as executor and trustee of said estate; and there-on said R. M. Manley duly qualified as such executor and trustee, and the right of action in favor of the plaintiff and against the said R. M. Manley as executor and trustee and as successor of said William H. Risk as such executor and trustee of said estate —.

Wherefore, plaintiff prays that said action proceed in the name of and against said R. M. Manley, as executor and trustee of
112 the estate of George Manley, deceased, as the successor of said William H. Risk, the executor and trustee of said estate.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

Endorsed on the back: No. 7833. R. A. Park, *vs.* Wm. H. Risk, executor, etc. Motion to continue cause against R. M. Manley. Filed March, 29, 1897, J. N. Cox, clerk.

Thereafter and on to wit: March 29, 1897, the court made an order in said cause continuing the same against R. M. Manley, as executor, which was duly entered of record in the journals of said court in Journal 28, page 62, and is in the words and figures following to wit:

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant.

Order.

Now on this 29th, day of March A. D. 1897 comes the above-named plaintiff and suggest- to the court that William H. Risk as executor of the estate of George Manley, deceased, on January 23rd, 1897 resigned his trust as such and that his powers as such executor and trustee have ceased and the- R. M. Manley has been duly appointed and qualified as executor and trustee of the estate of George Manley, deceased, and as such has succeeded to the rights, interests and authority of said William H. Risk as such executor, and moves the court to order and direct that said cause proceed in the name of said R. M. Manley, executor of the estate of
113 George Manley, deceased, as successor to said William H. Risk, as such executor. And there-on came L. F. Bird, Esq., attorney for the defendant and for said R. M. Manley as executor of the estate of George Manley deceased, and by consent of parties in open court said application and motion *is* sustained and it is by the court ordered that said action proceed in favor of said plaintiff and against R. M. Manley, as executor of the estate of George Manley, deceased as successor of said William H. Risk as executor of said estate.

Thereafter and on to wit: April 6, 1897, the plaintiff filed in said cause his supplemental petition, and same is in the words and figures following, to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant.

Supplemental Petition.

Comes now the said plaintiff and for his supplemental petition herein, the leave of the court having been first had and obtained, says:

That since the commencement of the above-entitled action and on to wit: the 23rd day of January 1897, the defendant William H. Risk, resigned his trust as executor of the estate of George Manley, deceased, and there-on his interests as the personal representa-ive of said George Manley deceased, did cease and determine, and R. M. Manley was duly appointed and did duly qualify as executor of the estate of George Manley, deceased, and there-on became the successor of William H. Risk, as such executor, which said resignation was accepted and the order appointing said R. M.

Manley as such executor was duly made, by the orphans'
114 court in and for the county of Union in the State of New Jersey, which court then had jurisdiction and authority to make the orders in relation thereto and there-on the said R. M. Manley did accept the trust as such executor and thereby succeeded to the said William H. Risk as executor of George Manley deceased.

That on March 27th, 1897 by order of this court, said R. M. Manley as such executor was substituted as defendant in the above-entitled cause, and as successor of said William H. Risk, executor as aforesaid, and there-on the plaintiff, was by leave of court permitted to prosecute said action against said R. M. Manley, as executor of the estate of George Manley deceased, and as successor of said William H. Risk as such executor and this plaintiff here adopts his petition as filed herein in all respects as if copied and set out as his cause of action against the said R. M. Manley executor of the estate of George Manley deceased, as successor of said William H. Risk as such executor, and here renews his prayer for judgment as stated in his original petition herein.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

Endorsed on the back as follows: No. 7833. R. A. Park *vs.* William H. Risk, executor etc., Supplemental petition. Filed April, 6, 1897. J. N. Cox, clerk.

Thereafter and on to wit:- November, 8, 1897, and by leave of court first had and obtained, said defendant filed answer in said cause, and same is in the words and figures following, to wit:

In the District Court of Atchison County, State of Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased; Reuben M. Manley, Executor of the Estate of George Manley, Deceased, Substituted Defendant, Defendant. } No. 7833.

115 *Answer.*

Comes now here the said defendant, Reuben M. Manley, executor of the -state of George Manley, deceased, and for his answer to the petition of the plaintiff and the amendment thereto, filed herein, says that he admits for the purpose of this case only, that George Manley deceased at the county of Union, in the State of New Jersey, on or about the 30th day of December, A. D. 1891, being at the time of his death a resident and citizen of said county and State, and that at the time of his death the said George Manley, deceased, was the owner and holder of shares of stock of the Kansas Trust and Banking Company, amounting to the sum of twenty-seven thousand five hundred dollars ($27,500.00); that the said George Manley died

testate, having made and published his last will and testament, and codicile thereto, therein and thereby designating and naming Reuben M. Manley, William H. Risk as executors of, and trustee- under, his said last will and testament; that on or about the 22nd day of January, A. D. 1892 said last will and testament, and codicile thereto, were duly admitted to probate in the orphans' court in and for the county of Union, State of New Jersey, and letters testamentary were issued to William H. Risk, one of the said executors and trustees, and thereon, and on said day, said William H. Risk duly accepted said trust and qualified as such executor and trustee, and thereon and thereby, said William H. Risk, as such executor, became seized and poss-ed of all the property of the late George Manley, deceased, lying and being situate in the State of Kansas; that on the 15th day of July A. D. 1896, letters testamentary were duly issued to said Reuben N. Manley the other of said executors and trustees, by the orphans' court of said Union county, State of New Jersey, and on said day said Reuben M. Manley, duly accepted said trust, and qualified as such executor and trustee; that on the 23rd day of January A. D. 1897, said William H. Risk, was by said orphans' court of said Union county, New Jersey, duly rel*e*ived
116 and discharged from his office as one of said executors and trustees under the said last will and testament of said George Manley, deceased, and there-on and thereby said Reuben M. Manley, as such executor, became seized and possesses of all the property of the late George Manley deceased, lying and being situate in the State of Kansas; that in all the proceedings in said orphans' court, and in the office of the surrogate of the said Union county, New Jersey, in the probate of said will and codicile and the granting of letters testamentary thereon, the orphans' court and the surrogate thereof, were duly and legally authorized and empowered to take proof of the execution of said will, and to make order of probate thereof, and grant letters testamentary to said William H. Risk and Reuben M. Manley, as such executors; that under and by virtue of such ownership of such shares of stock by said George Manley, deceased, and the making of said will and p.obate thereof, and the appointment of said William H. Risk and Reuben M. Manley, as executors of the said estate of George Manley, deceased, and the discharge of said William H. Risk, as such executor, said defendant, Reuben N. (Manley, executor of the estate of George Manley, deceased, became, and is now, a stockholder of the said The Kansas Trust and Banking Company, and as such executor of said estate is the owner and holder of said shares of stock of said corporation, amounting to the sum of twenty-seven thousand five hundred dollars ($27,500); that said plaintiff is a creditor of the said The Kansas Trust and Banking Company, a corporation duly incorporated and organized under the laws of the State of Kansas, in the amount and on account of the debenture bonds set out in the petition of the plaintiff; and said defendant denies the truth of each and every statement, allegation and averment, in said petition of the plaintiff, and the amendment thereto, made *pr* contained, excepting as hereinbefore expressly admitted.

Second. Said defendant further alleges that heretofore, and
117 on, to wit: the 13th day of March A. D. 1893, one Freeling Tufts was duly appointed the receiver of the Kansas Trust and Banking Company, by the circuit court of the United States, for the district of Kansas, first division, in the suit of William H. Risk, executor of the estate of George Manley, deceased, against The Kansas Trust and Banking Company. That said receiver duly qualified as such and was, at the time this action was brought, in the possession of all of the property of said corporation, and had cash on hand of said corporation in the sum of ten thousand dollars (10,000), and lands of said corporation that he was selling or renting, *by* such receiver never carried on the usual and ordinary business of said corporation, which was the loaning of money on farm mort--ages, and selling said mortgages, and after the appointment of such receiver said corporation did not transact any of its usual and ordinary business, but said corporation has never been dissolved, by the expiration of the time limited in its charter, or by a judgment of dissolution rendered by a court of competent jurisdiction.

Said defendant further alleges, that said plaintiff has never reduced his said claim to judgment either against the said The Kansas Trust and Banking Company, or its said receiver, and that said plaintiff cannot maintain this action, for that the act entitled, "Act concerning private corporations" approved March 6th, 1883, and under which act plaintiff claims to have brought this action, is unconstitutional and void, in that said bill contains more than one subject, and such subjects are not clearly expressed in its title; and it amends section 32 and 44 of the said act concerning private corporations, and does not contain the entire sections amended, and such sections so amended were not repealed, and the said act is in violation of section 16 article 2, of the constitution of the State of Kansas.

Third. Said defendant further alleges that there is a defect of parties plaintiff herein, and that said action should have been
118 brought by the said Freeling Tufts, if at all, as receiver of the Kansas Trust and Banking Company; and that said action should have been brought if at all, in equity, and for the benefit of all the creditors of said corporation.

Fourth. Said defendant further alleges that to secure the debenture bonds owned by the plaintiff and sued on herein, there *was* deposited with the First National Bank of Atchison, Kansas, as trustee, first mortgages upon real estate of equal face value with said debentures. That such first mortgages are still available as security for said debentures, and is a fund specially set a*p*rat for the payment of the same, and that the market value of said first mortgages is fully forty (40) per cent. of the claim of the plaintiff sued on herein, and that by reason thereof plaintiff must first exhaust such special security before he can maintain this action.

Sixth. Said defendant further alleges that since the commencement of this action, the Central Savings Bank of St. Joseph, Missouri, a judgment creditor, as it claims, of the said The Kansas Trust and Banking Company, in the sum of about twelve thousand

ollars (12,00–) commenced an action in the district court of Atchi
on county, Kansas, for itself, and all other creditors of the said
The Kansas Trust and Banking Company, against this defendant,
o recover the full amount of the liability of this defendant as a
tockholder in the said The Kansas Trust and Banking Company,
nd such action is still pending and undetermined.

Seventh. Said defendant further alleges that since the commence-
ment of this action, Mary A. Manley recovered a judgment against
the said The Kansas Trust and Banking Co., and Freeling Tufts,
its receiver, for over thirty-five thousand dollars, (35,000), in the
circuit court of the United States, for the district of Kansas,
119 first division, and caused execution to issue thereon, directed
to the marshall of the United States, for the district of Kan-
sas, and said execution was duly returned by said marshall "*nulla
bona*," and thereafter, and after the property of the said The Kansas
Trust and Banking Co., and its said receiver, had been entirely ex-
hausted, and divided amongst its credotors, she duly commenced her
action in the district court of Atchison county, Kansas, against this
defendant, to recover the full amount of the liability of this defend-
ant as a stockholder in the said The Kansas Trust and Banking Co.,
and such action is still pending and undetermined.

And said defendant having fully answered herein, asks that he
may go hence without day and recover his costs herein.

(Signed) L. F. BIRD,
Attorney for Defendant.

Endorsed on the back: No. 7833, Richard A. Park, *vs.* Wm. H. Risk, ex. etc., Answer. Filed Nov. 8th, 1887, by J. N. Cox, clerk. L. F. Bird, att'y for defendant.

Thereafter an- on, to wit: November 10th, 1897, plaintiff filed his reply in said cause, and same is in the words and figures following, to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased; Reuben M. Manley, Executor of the Estate of George Manley, Deceased, Substituted Defendant. } No. 7831.

Reply.

Comes now the said plaintiff and for reply to the answer of the substituted defendant Reuben M. Manley, executor of the es-
120 tate of George Manley deceased, says:

I.

That he denies each and every statement, averment and allegation of new matter or matter of defense contained in said answer,

which is in any manner contrary to or inconsistent with the allegations of the plaintiff's petition.

II.

The plaintiff alleges and ch-rges the fact to be that the said George Manley at the time of his decease, and long prior thereto, was not a citizen of the State of Kansas, nor was he within said State of Kansas; and that said William H. Risk and Reuben M. Manley were not, nor were either of them, residents within or citizens of the State of Kansas at any time after the appointment of them respectively as executor of the estate of said George Manley deceased, nor were they or either of them within the said State of Kansas after their respective appointments as such executor, but were continuously out of and beyond the said State of Kansas.

III.

For reply to the second count or defense stated in the answer of the said defendant, the plaintiff says that the same does not state facts constituting any defense to plaintiff's cause of action, and that neither of the facts alleged therein constitute any defense to plaintiff's cause of action.

Plaintiff further alleges that the pretended appointment of said Freeling Tufts, as said receiver of the Kansas Trust and Banking Co. and his qualifications as such, nor the want of dissolution of said corporation, to wit, the Kansas Trust and Banking Company either by expiration of the time limited in its charter or by judgment of dissolution rendered by a court of competent jurisdiction, nor the failure of said plaintiff to reduce his claim to judgment either against said The Kansas Trust and Banking Company or Freeling Tufts, receiver thereof, constitutes any defense to plaintiff's cause of action.

121 Plaintiff further says that at the time of the commencement of this action or at any time thereafter, the said Freling Tufts, receiver, did not have, nor has he at any time had, since in his possession, cash on hand of the said corporation, the said Kansas Trust and Banking Company, amounting to the sum of $10,00-.00 or any sum in excess of $3,000.00; nor did he at that time or since then have in his possession as such receiver, lands of said corporation of exceeding the value of $1,000.00; that during all the time the said Freeling Tufts had possession of the property of the said The Kansas Trust and Banking Company, it was indebted to divers and sundry persons in amounts exceeding $200,000 and that during all such time said receiver did not have, nor did the said The Kansas Trust and Banking Company have, property, money and rights, exceeding in amount and value 15 % of its entire indebtedness; and said The Kansas Trust and Banking Company was at the time of the commencement of this action and for a long time prior thereto, wholly insolvent and had no means with which to pay its liabilities which at that time and for a long time prior thereto exceeded the sum of $200,000 and upon all the property of said The Kansas Trust and

Banking Company, at the time of the appointment of said receiver and subsequent thereto, there were mortgages and encumbrances in amount largely in excess of the value thereof.

Plaintiff further says that at the time of the commencement of said action, he did not have nor has he had since any lien upon or interest in any of the property of the said The Kansas Trust & Banking Company, so in the hands of said Freeling Tufts, receiver of said company.

IV.

For reply to the third defense stated in the answer of defendant, plaintiff says: That the same does not state facts sufficient to constitute any defense to plaintiff's cause of action and that the facts therein alleged and stated, if true, do not constitute any defense to the cause of action stated in plaintiff's petition.

122

V.

For reply to the fourth count of said answer, plaintiff says that the same does not constitute any defense to plaintiff's cause of action as stated in his petition.

VI.

For reply to the fifth count of defendant's answer, plaintiff says that the same does not constitute any defense to plaintiff's cause of action as stated in his petition; that the facts therein alleged and stated do not constitute any defense to plaintiff's cause of action as stated in his petition.

And plaintiff for further reply to said fi-th count of said *as* answer says: That he admits that there were deposited by the Kansas Trust and Banking Company with the First National Bank of Atchison, Kansas, as trustee, mortgages upon real estate of equal face value with the debentures held by the plaintiff and described in plaintiff's petition; but plaintiff denies that such mortgages were first mortgages upon said real estate and denies that they are still available as security for said debentures, and denies that the same are or at any time were, specifically set apart for the payment of the debenture bonds held by the plaintiff, and denies that the market value thereof is 40 % of the claim of the plaintiff sued on herein, and denies that the plaintiff is under any obligation, legal or equitable, to first exhaust such special security before he can maintain this action.

For further reply to said fifth count of said answer, the plaintiff says: That there *was* deposited by the Kansas Trust and Banking Company with the First National Bank of Atchison, Kansas, as trustee mortgages upon divers and sundry pieces and parcels of lots and lands which mortgages purported to have been given for the sum of $12,400.00 and the same were deposited with said bank as trustee to secure debenture bonds of the Kansas Trust and Banking Company, series "B" aggregating the sum of $120400.00 which were of

123 the same class and character as those held by the plaintiff, and of which $120,400.00 of debenture bonds, those held by the plaintiff constitute a part; that subsequent to the appointment of

the said Freeling Tufts receiver, said mortgages were by order of the court by which said receiver was appointed, transferred and delivered to S. A. Frazier, trustee; that said S. A. Frazier, in the due discharge of his duties as such trustee, under the orders of the court, by which he was so appointed trustee, foreclosed said mortgages and collected and realized upon all the securities so delivered to said The First National Bank of Atchison Kansas, to secure said debenture bonds, and upon the purchase of the lands described in said mortgages at such foreclosure sales by the trustee, they were purchased at and for the prices and amounts aggregating about 40% of the face value and amount of said debenture bonds, and the title to said property is now held by said S. A. Frazier as trustee for the benefit of the holders of said debenture bonds, and the same is insufficient in amount and value to pay more than 30% of the face value of the said debenture bonds series "B" other than the debenture bonds so held by this plaintiff, and that upon the just and proper application of said property and funds so *so* in *in* the hands of said S. A. Frazier, trustee, upon and to the payment of said debenture bonds series "B" other than those held by the plaintiff and to recover the amount of which this action is brought—the same will be wholly insufficient to pay more than 30% of said debenture bonds other than those held by the plaintiff; and by reason thereof this plaintiff has the right and it is his duty towards said holders of other debenture bonds series "B," to recover out of the property of the defendant as a stockholder of said corporation, and to that extent relieve the property and funds in the hands of the said trustee from the payment of the debenture bonds so held by this plaintiff, as the liability of the defendant is a property and fund to which said other holders of debenture bonds series "B" cannot now look for the payment of the indebtedness so due to them on account of such debenture bonds.

Plaintiff further says that the total face value of the debenture bonds so issued and outstanding at the time of the commence-
124 ment of this action was the sum of $120,400.00 and besides those held by the plaintiff exceeded the sum of $118.00, and that the total value of the mortgages so pledged as aforesaid to said trustee to secure the same, did not exceed the sum of $40,000.00 and that said mortgages *has* been foreclosed and the title to the property described therein obtained by foreclosure sale an- purchase by said trustee, before the commencement of this action, and the same is now held by said S. A. Frazier as such trustee for the ben-fit of the holders of such debenture bonds "series B," and all of the interest of the said The Kansas Trust and Banking Company in said mortgages and securities so deposited with said trustee had been realized upon by foreclosure and the sale of the property described in the mortgages, and the amount for which said properties described in said mortgages were purchased is held by said trustee for the benefit of such holders of said debenture bonds series "B" as may be entitled thereto, and the same is not held for the use and benefit of said The Kansas Trust and Banking Company nor the receiver thereof, nor has the said The Kansas Trust and Banking

Company at any time since the commencement of this action had any interest therein.

VII.

Plaintiff for reply to the seventh count of defendant's answer says: That the facts therein alleged, if true, do not constitute any defense to plaintiff's cause of action.

Wherefore, plaintiff renews his prayer for judgment as stated in his petition.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

Endorsed on the back: No. 7833. Richard A. Park, *vs.* Wm. H. Risk, executor of George Manley estate. Reply. Filed Nov. 10, 1897, by J. N. Cox, clerk.

Thereafter and on to wit: December 13, 1897, said cause was tried to the court and without a jury, a trial by jury being waived,
125 and judgment was rendered in favor of the plaintiff and against the defendant, and the property attached was ordered sold, defendant excepting. And said judgment was entered of record in the journals of said court in Journal 28, page 422, and is in the words and figures following, to wit:

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant; Reuben M. Manley, Executor of the Estate of George Manley, Deceased, Substituted Defendant.

Journal Entry.

Now on this 15th day of December 1897, comes the said plaintiff by Jackson & Jackson his attorneys as also comes the said defendant by L. F. Bird, his attorney, and this cause being regularly called for trial, a jury being waived by agreement of counsel and the cause tried to the court and the court having heard the evidence doth find that the statements and allegations of the plaintiff's petition are true and that the plaintiff is entitled to recover of and form William H. Risk as executor of the state of George Manley deceased and of and from Reuben M. Manley as executor of the estate of George Manley deceased against whom said action has been revived as substituted defendant herein, the sum of twenty-four hundred sixty-three and 7/100 ($2463.07) dollars with interest thereon from this date at the rate of six (6) per cent. per annum and costs of suit; and to an order of sale of the property attached and hereinafter described.

It is therefore ordered, adjudged and decreed by the court that the plaintiff have and recover of and from William H. Risk, as executor of the estate of George Manley, deceased and of and
126 from Reuben M. Manley, as executor of the estate of George Manley deceased, against whom this action has been revived

as substituted defendant, the sum of twenty-four hundred sixty-three and 7/100 ($2463.07) dollars, with interest thereon from this date at the rate of six (6) per cent. per annum, and costs of suit taxed at the sum of — dollars, for all which let execution issue.

It is further ordered adjudged and decreed by the court that an order of sale issue out of this court for the sale of the property attached in this action to wit: the northeast quarter of section twenty-five (25) in township five (5) range twenty (20) lying and being in Atchison county, Kansas, for the payment of said sum adjudged to be due to the plaintiff. And that upon the sale of said property the proceeds thereof be applied:

First. In the payment of the costs of this action and the costs which may accrue upon the order of the sale and sale of said property.

Second. The taxes so due to the plaintiff upon said judgment together with the interest as stated therein; the balance if any to be brought into court to abide the further order of the court herein, defendant excepting.

(Signed) W. T. BALND, *Dist. Judge.*

Thereafter and on to wit: December, 15, 1897, and at the same term of court at which said judgment was rendered the defendant filed in said cause his motion for a new trial, and the same is in the words and figures following to wit:

In the District Court of Atchison County, State of Kansas.

RICHARD A. PARK, Plaintiff,
vs.
REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Defendant.

127 *Motion for New Trial.*

Comes now here the said defendant, and moves the court for a new trial herein, for the following causes to wit:

First. Error in the assessment of the amount of recovery, same being too large.

Second. That the decision and judgment of the court *is* not sustained by sufficient evidence.

Third. That the decision and judgment of the court *is* contrary to law.

Fourth. Error of law occurring at the trial, and excepted to by the defendant.

(Signed) L. F. BIRD,
Attorney for Defendant.

Endorsed on the back: No. 7833. Richard A. Park, *vs.* Reuben M. Manley ex.—etc. Motion for new trial. Filed Dec. 15, 1897 by J. N. Cox, clerk.

Thereafter an- on to wit: June 7, 1898, the court overruled the said motion of the defendant for a new trial, defendant excepting, and the order of the court overruling said motion for a new trial was entered of record in the journals of said court in Journal 129, page 20, and is in the words and figures following, to wit

RICHARD A. PARK, Plaintiff,
vs.
R. M. MANLEY, Executor of the Estate of George Manley, Deceased, Substituted for William H. Risk, Executor of said Estate, Defendants.

Now on this 27th day of June, 1898, comes the said plaintiff by Jackson & Jackson his attorneys as also comes the said defendant
128 by L. F. Bird his attorney, and thereupon came on for hearing the motion of the defendant for a new trial as filed herein; which motion having been argued by counsel and considered by the court was by the court overruled and denied, to which ruling and decision of the court the said defendant then and there excepted.

Thereupon, for good cause shown, time is extended to the said defendant for ten days from this date in which to make and serve upon plaintiff, a case-made for the court of appeals or supreme court and time allowed the plaintiff for five days thereafter in which to suggest and serve amendments, the same to be settled upon five days' notice in writing by either party.

129 Thereafter and on to wit: June 18, 1898 the plaintiff filed in said cause a motion to amend proof of publication, and same is in the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Defendant.

Motion of Plaintiff to Have Proof of Publication Amended and Corrected.

Comes now the said plaintiff and moves the court to order that said plaintiff filed amended proof of publication of notice in said cause, for the reason that the proof of publication as filed therein is contradictory as to the kind of newspaper in which the same was published and is incorrect as to the number of issues of the paper in which such notice was published.

Affidavits, record and oral evidence will be used on hearing hereof.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

To L. F. Bird, Esq., attorney for defendant:

You are hereby notified that plaintiff has filed a motion of which the above and foregoing is a copy in the above court and cause

and the same will be presented on Tuesday, June 21st, 1898, at 9 o'clock or as soon thereafter as plaintiff can be heard.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

Service of the above and foregoing notice is hereby acknowledged to have been made on me this — day of ——, A. D. 1898.

——,
Attorney for Defendant.

Endorsed on the back: No. 7833. R. A. Park *vs.* R. M. Manley, executor, etc. Motion for leave to amend proof of publica-
130 tion and notice. Filed June 18, 1898, by J. N. Cox, clerk.

Thereafter and on to wit: June 24, 1898, the plaintiff filed in said cause, notice of motion to amend proof of publication in said cause, and same is — the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased, Defendant; Reuben M. Manley, Executor of said Estate, Substituted Defendant. } No. 7833.

To L. F. Bird, Esq., attorney for the defendant:

You are hereby notified that on Saturday, June 25th, 1898, at 9 o'clock a. m. or as soon thereafter as plaintiff can be heard, the motion of plaintiff for leave to amend the proof of publication notice in said cause, will be called for hearing in the district court room in the city of Atchison, Atchison county, Kansas; of which motion a copy was sent you by mail on June 17th, 1898, but of which notice no acknowledgement was made, and said motion could not then be presented because of the illness of the judge of said court.

(Signed) JACKSON & JACKSON,
Attorneys for Plaintiff.

STATE OF MISSOURI, } *ss:*
Jackson County, }

W. R. S. Piatt being duly sworn upon his oath says that on the 23rd day of June A. D. 1898, at Kansas City, Missouri he delivered to L. F. Bird, Esq., the attorney for said defendant above named, a copy of the above and foregoing notice.

(Signed) W. R. S. PIATT.

Subscribed and sworn to before me this 23rd, day of June
131 A. D. 1898.

Wotness my hand and official seal hereunto affixed the day and year above written.

[L. S.]

(Signed) CHARLES W. GERMAN,
Notary Public, Jackson County, Missouri.

My commission expires M'ch 9, 1899.

Endorsed on the back: No. 7833. Richard A. Park, *vs.* Wm. H. Risk, ex't'r etc. Notice of motion to amend proof of publication. Filed June 24–1898, by J. N. Cox, clerk.

Thereafter and on to wit: June 25, 1898 the court made an order permitting the plaintiff to file in said cause an amended proof of publication therein, and said order was duly entered of record in the journals of said court in Journal 29, page 49, and is in the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased; Reuben M. Manley, Executor of said Estate, Substituted Defendant. } No. 7833.

Now on this 25th day of June 1898, comes the said plaintiff by Jackson & Jackson his attorneys and presents to the court the motion of the plaintiff for leave to file amended proof of publication of notice in the above-entitled cause, and therewith presents proof of service of notice of this hearing as on file herein, and it appearing to the court that the said defendant has had due notice of the hearing of said motion, and having failed to appear or show cause
132 why said moyion should npt be allowed, and the court having heard said motion and the evidence in support thereof and the premises being fully seen and understood, said motion is sustained and said plaintiff is allowed to file amended proof of publication of notice which notice and proof of publication thereof is by the court examined and approved and the approval of the court endorsed thereon, and the same is allowed to be filed herein in all repsects as if the same had been made, examined and approved by the court and filed in said cause at the time of th- trial thereof.

Thereafter and on to wit: June 25, 1898 the plaintiff filed in said cause an amended proof of publication notice, and same is in the words and figures following, to wit:

Publication Notice.

To William H. Risk, executor of the estate of George Manley, deceased:

You are hereby notified that R. A. Park as plaintiff, has filed his petition in the district court of Atchison county, State of Kansas,

against you as defendant and that you, William H. Risk, executor of the estate of George Manley, deceased, have been sued and must answer the petition filed by said R. A. Park, as plaintiff, on or before the 14th day of January, 1896, or the petition will be taken as true and judgment, for the sum of two thousand dollars with interest thereon, at 7 per cent. per annum from the 15th day of February, 1893, less one credit of ($100.00) made March 22nd, 1894, and one credit of (100.00) dollars made September 5th, 1895, and an order of sale of the following-described property attached in said cause, to wit: the northeast quarter of section twenty-five (25) township five (5) of range twenty (20) lying and being situate in Atchison county, State of Kansas, will be rendered accordingly.

(Signed) R. A. PARK, *Plaintiff*,
By JACKSON & JACKSON, *Attorneys.*

(7833) 11-30-23t.

STATE OF KANSAS, } ss:
County of Atchison, }

133 A. J. Felt being duly sworn upon oath states that he was on the dates hereinafter mentioned, publisher of the Atchison Champion, a daily newspaper, printed and published in said Atchison county; and of general circulation therein, and which has been so printed and published in said Atchison county continuously and uninterruptedly for a period of fifty-two consecutive weeks last preceeding the date of the first publication of the annexed notice and made a part thereof, the notice, a true copy of which is hereto annexed, and made a part hereof, was published in said daily newspaper, the first publication thereof being on the 30th, day of November, A. D. 1895, and the last publication thereof being on the 8th day of January A. D. 1896, and in each and every issue of said daily newspaper between those dates, both inclusive.

(Signed) A. J. FELT.

Subscribed in my presence and sworn to before me, this 18th day of June, A. D. 1898.

(Signed) Z. E. JACKSON,
Notary Public.

My commission exp. Dec. 29, 1898.

Endorsed on the back: No. 7833. Richard A. Park, *vs.* Wm. H. Risk, executor, Proof publication of notice. Filed June 25, 1898, by J. N. Cox, clerk.

June 25, 1898.—Examined and approved

W. T. BLAND,
District Judge.

And thereafter and on the 12th day of December 1899, there was filed in said court and cause the mandate and judgment of the supreme court of the State of Kansas dismissing the petition and proceedings in error of said defendant as plaintiff in error to reverse the judgment herein,

4 Thereafter an- on to wit; May 31, 1900 the defendant filed a motion in said court and cause to set aside the judgment in d cause, and same is in the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
ILLIAM H. RISK, Executor of the Estate of George Manley, Deceased; R. M. Manley, Executor of said Estate, Substituted Defendant, Defendant. } No. 7833.

Motion to Set Aside Judgment.

Comes now here the above-named defendant, R. M. Manley, execu- or of the estate of George Manley, deceased, and moves the court to et aside, vacate and annul the pretended judgment heretofore, ren- ered in favor of the plaintiff and against the defendant, and also he order and judgment of the court ordering the property herein ttached to be sold to satisfy said judgment for the following rea- ons, to wit:

First. For that the said district court had no jurisdiction to enter- ain said suit, and to render judgment therein and to order the prop- rty attached herein to be sold to satisfy said judgment.

Second. For that said judgment and the record in the above-entitled ause, shows that the plaintiff was not a judgment creditor of the Kansas Trust and Banking Company, and that the Kansas Trust and Banking Company had not been dissolved by the expiration of the ime limited in its charter or by a judgment of dissolution rendered by a court of competent jurisdiction, and that the plaintiff had a special security for the payment of the debenture bonds sued on, and did not allege in his petition that said special security had 135 been exhausted, and that the act of the legislature of the State of Kansas, entitled "An act concerning private corporations," approved March 6, 1883, and on which the action of the plaintiff is grounded and based is unconstitutional and void, and in conflict with sec. 16, art. 2 of the constitution of the State of Kansas, in that said amendatory act contains more than one subject, and such subject is not clearly expressed in the title of said act, and said act amends what is now par. 1204. G. S. 1889. and other sections of the corporation act, without containing or repealing the entire sections amended.

Third. For that said judgment and the record in the above-entitled cause shows that the above-entitled action was a suit against the executor of the estate of a dead man, and under the constitution and laws of the State of Kansas, the probate court of Atchison county, Kansas, and not the district court of Atchison county, Kansas, has jurisdiction to entertain the claim of the plaintiff, if he had one. That under the law no attachment could legally issue against the property of the defendant executor, and sec. 203 of the executors' and administrators' act, or any other statute of the State of Kansas, which attempts to permit such attachment is unconsti-

tutional and in contravention of sec. 6, art. 3, and sec. 8, art. 3, of the constitution of the State of Kansas, and of the laws of the State of Kansas relating to the proving of claims against the estate of deceased persons, and also violates secs. 1 and 2, art. 4, and the 14th amendment, Constitution of the United States, and sec. 27, of the act of Congress creating the Territory of Kansas. That the said district court of Atchison county, Kansas, in rendering said judgment, and in ordering the sale of said attached property did not give full faith and credit to the public acts and judicial proceedings of the surrogate of the orphans' court of Union county, New Jersey, where the said estate of George Manley was being administered (Const. U. S. art. 4, sec. 1) and did not accord to the defendant and his predecessor, a citizen of the State of New Jersey, all the privileges and immunities of an executor resident in the State of Kansas (Const. U. S. art. 4, sec. 2), and enforced the said sec. 203 of the executors' and administrators' act of the State of Kansas, which abridged the privileges of the defendant, and his predecessor citizens of the United States, and their immunity from suit by attachment, and deprived them of their property, without due process of law, and denied them the equal protection of the laws, (14th amnd. Const. U. S.).

Affidavits, record and other evidence will be used on the hearing of this motion.

(Signed) DAVID MARTIN &
L. F. BIRD,
Attorneys for Defendant.

The above-named plaintiff, and his attorneys of record, Jackson & Jackson, will take notice that the defendant, above named will call up for hearing the above motion in the court-room of the district court of Atchison county, Kansas, on Saturday, June 2, 1900, at 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, and that affidavits and other evidence will be used on the hearing of said motion

136 (Signed) DAVID MARTIN &
L. F. BIRD,
Attorneys for Defendant.

Endorsed on the back: No. 7833. Richard A. Park *vs.* Wm. H. Risk, ex'r. Motion to set aside judgment. Filed May 31, 1900. By J. N. Cox, clerk. Davis Martin L. F. Bird attorneys for the defendant.

Thereafter and on to wit: May 31, 1900 the defendant filed a motion in said court and cause to withdraw the order of sale isued in said cause, and same is in the words and figures following to wit:

In the District Court of Atchison County, Kansas.

RICHARD A. PARK, Plaintiff,
vs.
WILLIAM H. RISK, Executor of the Estate of George Manley, Deceased; R. M. Manley, Executor of said Estate, Substituted Defendant. } No. 7833.

137 *Motion to Withdraw Execution or Order of Sale.*

Comes now here the above-named defendant, R. M. Manley, executor of the estate of George Manley, deceased, and moves the court to withdraw the execution, or order of sale issued in the above-entitled action, and under which the sheriff of Atchison county, Kansas, has advertised the real property attached and order- sold herein, for sale, for the following reasons, to wit:

First. For that the said district court had no jurisdiction to entertain said suit and to render judgment therein and to order the property attached herein sold to satisfy said judgment.

Second. For that said judgment, and the record in the above-entitled cause, shows that the plaintiff was not a judgment creditor of the Kansas Trust and Banking Company had not bee- dissolved by the expiration of the time limited in its charter or by a judgment of dissolution rendered by a court of competent jurisdiction, and that the plaintiff had a special security for the payment of the debenture bonds sued on, and did not allege in his petition that said special security had been exhausted, and that the act of the legislature of the State of Kansas, entitled "An act concerning private corporations," approved March 6, 1883, and on which the action of the plaintiff is grounded and based is unconstitutional and void, and in conflict with sec. 16, art. 2, of the constitution of the State of Kansas, in that said amendatory act contains more than one subject, and such subject is not clearly expressed in the title of said act, and said act amends what is now par. 1204, G. S. Ks. 1889, and other sections of the corporation act, without containing or repealing the entire sections amended.

Third. For that said judgment and the record in the above-entitled cause shows that the above-entitled action was a suit against the executor of the estate of a dead man, and under the con-
138 stitution, and laws of the State of Kansas, the probate court of Atchison county Kansas, and not the district court of Atchison county, Kansas, had jurisdiction to entertain the claim of the plaintiff if he had one. That under the law no attachment could legally issue against the property of the defendant executor and sec. 203 of the executors' and administrators' act, or any other statute of the State of Kansas, which attempts to permit such attachment is unconstitutional and in contravention of sec. 6. art. 3, and sec. 8, art. 3 of the constitution of the State of Kansas, and of the laws of the State of Kansas relating to the proving of claims ag-inst the estate of deceased persons, and also violates secs. 1 and 2, art. 4, and the 14th

amendment, Constitution of the United States, and sec. 27, of the act of Congress creating the Territory of Kansas. That the district court of Atchison county, Kansas, in rendering said judgment, and in ordering the sale of said attached property did not give full faith and credit to the public acts and judicial proceedings of the surrogate of the orphans' court of Union county, New Jersey, wh-rer the said -s-ate of George Manley, was being administered (Const. U. S. art. 4, sec. 1,) and did not accord to the defendant and his predecessor, a citizen of the State of New Jersey, all the privileges and immunities of an executor resident in the State of Kansas (Const. U. S. art. 4, sec. 2), and enforced the said sec. 203 of the executors' and administrators' act of the State of Kansas, which abridged the privileges of the defendant, and his predecessor, ci-izens of the United States, and their immunity for suit by attachment and deprived them of their property, without due process of law, and denied them equal protection of the laws (14th amend. Const. U. S.).

Fourth. For that the above-named defendant has filed his motion to set aside the judgment and order of sale herein, for the reasons above stated, and said motion is now pending and undeter-
139 mined by this court, and justice would be done by withdrawing said order of sale pending the hearing and determination of the said motion of the defendant to set aside judgment and order of sale.

Affidavits, record -nd other evidence will be used on the hearing of this motion.

(Signed) DAVID MARTIN &
L. F. BIRD,
Attorneys for the Defendant.

The above-named plaintiff, and his attorneys of record, Jackson & Jackson, will take notice that the defendant, above named will call up for hearing the above motion in the court-room of the district court of Atchison county, Kansas, at Atchison, Kansas on Saturday June 2nd, 1900 at 10 o'clock a. m. of said day or as soon thereafter as counsel can be heard, and that affidavits and other evidence will be used on the hearing of said motion.

(Signed) DAVID MARTIN &
L. F. BIRD,
Attorneys for Defendant.

Endorsed on the back: No. 7833. Richard A. Park, *vs.* Wm. J. Risk, ex'r. Motion to withdraw order of sale. Filed May 31, 1900, by C. N. Cox, clerk. David Martin & L. F. Bird, att'y- for defendant.

140 And thereafter, and on to wit: June 2, 1900 said motions so filed by the defendant coming on to be heard, and said defendant having given plaintiff due notice of the hearing of said motion, the plaintiff appeared by Jackson & Jackson, his attorneys, and the said defendant appeared by L. F. Bird his attorney and the said defendant introduced and read in evidence the pleadings, pro-

cess, writ of attachmeny and return thereon, affidavit for publication, proof of publication and judgment in the above-entitled action and all the pleadings, filed journal entries and judgments in the above-entitled action, as hereinbefore fully copied out herein, as also the order of sale issued herein for the sale of the property attached herein with sale advertised for June 30, 1900 at 2 p. m. at the east front door of the Atchison County court-house, and no other evidence was introduced or heard on the hearing of said motions. And the court having heard the evidence and argument of counsel thereon had, on said June 2nd, 1900 overruled said motions and each the-of, the said defendant excepting to the overruling of each of them, and immediately there-on, and on the same day and for good cause shown, said defendant was allowed ten days to make and serve a case-made herein, for the supreme court of the State of Kansas, and said plaintiff was allowed five days thereafter in which to make and serve suggestions of amendments to said ca-e-made, and said case-made to be thereafter settled on five days' notice by either party.

The above and foregoing contains a statement of all the pleadings, evidence, judgment and other matters in the above-entitled action for the supreme court of the State of Kansas.

DAVID MARTIN &
L. F. BIRD,
Attorneys for the Defendant, Reuben M. Manley, Executor of the Estate of George Manley, Deceased.

Service of the above case-made is hereby acknowledged to have been made on us this June 12, 1900.

JACKSON & JACKSON,
Att'ys for Pl'ff.

141 And now on this July 3, 1900 comes on for hearing the application of the above defendant for a settlement of the above case-made and the suggestions of amendments thereto, and the defendants having given due notice of this application and all parties appearing at this time the above and foregoing is settled with the suggestions of amendments thereto, and is signed by me as a true and perfect case-made herein, and is ordered filed as a part of the record in this cause.

(Signed) W. T. BLAND,
District Judge.

Attest:
J. N. COX,
Clerk Dist. Court,
By KATE KENNISH,
[L. S.] *Dep'ty Clerk.*

Filed Jul- 8, 1900.
J. N. COX, *Clerk.*
By KATE KENNISH, *Dep. Clerk.*

142 And afterwards on the 13th day of November 1900 there was filed in the office of the clerk of the supreme court of the State of Kansas a waiver of the issuance and service of summons in error, which waiver with the endorsements thereon is in words and figures as follows, to wit:

143 In the Supreme Court of the State of Kansas.

R. M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
R. A. PARK, Defendant in Error.

Issue and service of summons in error is hereby waived and appearance entered in the above-entitled cause this September 1st, 1900.

JACKSON & JACKSON,
Attorneys for Defendant in Error.

Endorsed on back: No. 11833. R. M. Manley, executor, etc., vs. R. A. Park. Waiver of summons in error. Filed Nov. 13, 1900. D. A. Valentine, clerk supreme court.

144 And be it further remembered, that on the 1st day of December, 1900, the same being one of the regular judicial days of the July, 1900 term of the supreme court of the State of Kansas, said court being in session at its court-room in the city of Topeka, there being present the Honorable Frank Doster, chief justice, the Honorable William A. Johnston, and the Honorable William R. Smith, associate justices, the following proceeding was had and remains of record as follows, to wit:

145 *Journal Entry of Assignment.*

It is ordered that the following cases be assigned for hearing at the February 1901 session of this court: Title of case. Manley vs. Parks No. 11833 page 11.

146 And afterwards on the 5th day of February A. D. 1901, there was filed in the office of the clerk of the supreme court of the State of Kansas a motion to withdraw the transcript attached to the petition in error and attach to said petition in error a case-made, which motion with the endorsements thereon is in the words and figures as follows, to wit:

147 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 11833.

Motion for Leave to Withdraw Transcript of Record.

Comes now here the plaintiff in error and shows to the court that he originally commenced this proceeding in error by petition in error and transcript of the record of the proceedings of the Atchison county district court. That afterwards he filed the original case-made, and a copy thereof, in the above-entitled cause, in this court, and plaintiff in error now asks that he may be permitted to withdraw said transcript of the record from the files of this court, and substitute therefor said case-made, and correct his petition in error so as to show that a case-made is attached thereto instead of a transcript of the record.

DAVID MARTIN,
L. F. BIRD,
Attorneys for Plaintiff in Error.

(Endorsed on back:) No. 11833 R. M. Manley, ex'r *vs.* Richard A. Park Motion for leave to withdraw transcript &c. David Martin & L. F. Bird att'ys for plaintiff in error. Filed Feb. 5, 1901. D. A. Valentine, clerk supreme court.

148 And be it further remembered, that afterward on the 6th day of February A. D. 1901 the same being one of the regular judicial days of the January, 1901 term of the supreme court of the State of Kansas, the said court being in session at its court-room in the city of Topeka, there being present the Honorable Frank Doster, chief justice, the Honorable William A. Johnston, and the Honorable William R. Smith, associate justices, the following proceeding was had and remains of record as follows, to wit:

149 *Journal Entry of Submission.*

REUBEN M. MANLEY, Ex'r, etc., Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } 11833.

This cause comes on to be heard on the petition in error and transcript of the record of the district court of Atchison county; and also comes on to be heard the motion of the plaintiff in error to attach a case-made of the above-entitled case to his petition in error and amend his petition in error instanter by referring therein to said case-made as an exhibit; and thereupon it is ordered that said motion be allowed; and that plaintiff in error be permitted to at-

tach a case-made to his petition in error and to amend the same by reference therein to said case-made as an exhibit thereto; and thereupon after oral argument by H. M. Jackson for the defendant in error said cause is *submitted* on brief of counsel for both parties and taken under advisement by the court.

150 Be it further remembered, that on the 9th day of March A. D. 1901, the same being one of the regular judicial days of the January, 1901 term of the supreme court of the State of Kansas, said court being in session at its court-room in the city of Topeka, there being present the Honorable Frank Doster, chief justice, the Honorable William A. Johnston, the Honorable William R. Smith, the Honorable Edwin W. Cunningham, the Honorable Adrian L. Greene, the Honorable Abram H. Ellis, and the Honorable John C. Pollock, justices, the following proceeding was had and remains of record as follows, to wit:

151 *Journal Entry of Decision.*

REUBEN M. MANLEY ET AL., Pl'ffs in Error,
vs.
RICHARD A. PARK, Def't in Error. } 11833.

This cause comes on for decision and thereupon it is ordered and adjudged that the judgment of the court below be *affirmed*. It is further ordered that the plaintiff in error pay the costs of this case in this court, taxed at $—. And hereof let execution issue.

152 And also on the 9th day of March, A. D. 1901, there was filed in the office of the clerk of the supreme court of the State of Kansas, the syllabus and opinion of said court in this cause, which syllabus and opinion are in words and figures as follows, to wit:

153 REUBEN M. MANLEY, as Executor, etc.,
vs.
RICHARD A. PARK. } No. 11833.

Error from Atchison county. Affirmed.

Syllabus by the Court—Ellis, J.

1. When a court having jurisdiction of the subject-matter and the parties to an action, renders judgment therein and the party aggrieved thereby fails to effect an appeal from such judgment within the time, and in the manner provided by law, such judgment is *res adjudicata* as to all matters necessarily involved in such action, and, therefore, presumably considered by the court, save alone such propositions appearing in the record as relate to the jurisdiction of the court over the subject-matter and parties to such action.

2. In such a case the fact that a proceeding in error from the judgment of the district court was taken to this court, and was here dismissed for non-compliance with the statute will not change the rule as to the conclusiveness of the judgment of the court below.

All the justices concurring.

A true copy.
Attest: —— ——,
Clerk Supreme Court.

154 REUBEN M. MANLEY, as Executor, etc., *v.* RICHARD A. PARK. } No. 11833.

Error from Atchison county.

Statement.

In November, 1895, an action was commenced by the defendant in error against Wm. H. Risk as executor of the last will of George Manley, deceased. The action was founded on certain debentures or bonds issued by the Kansas Trust and Banking Company, of which the decedent was a stockholder, and which was alleged to be an insolvent Kansas corporation, organized to loan money and which had suspended business more than a year previously. The petition also set forth that Manley was a resident of Union county, New Jersey at the time of his decease; that he died testate; that Risk had been designated in the will and had been subsequently duly appointed as executor and trustee of the estate of the decedent by the orphans' court of Union county. Subsequently, in due course and regular form, R. M. Manley was substituted as executor by said orphans' court, and as defendant in the court below, in lieu of Risk, and said Manley, as such executor, filed an answer in said cause, to which reply was made.

The plaintiff sought to charge the defendant, R. M. Manley, as executor, with liability as a stockholder of said insolvent trust company, and the allegations of the petition are formal and voluminous.

An attachment was issued at the time the action was commenced and levied on lands held by the defendant as such executor, and situated in said Atchison county, and service by publication was duly had. The plaintiff's causes of action had not been reduced to judgment against the insolvent corporation which issued said debentures.

155 Afterwards, and on the 13th day of December, 1897, the case was tried to the court, without a jury, and the plaintiff recovered judgment for $2463.07, and an order for the sale of the property attached was made. A motion for a new trial was filed and overruled, and the cause was brought here on a case-made and dismissed, on motion, in this court, without a hearing on the merits. Manley as executor, etc. *v.* Richard A. Park, 61 Kan. 857.

On the 12th day of December, 1899, there was filed in the court below, the mandate and judgment of this court dismissing the petition and proceedings in error, and on May 31, 1900, the defendant filed two motions; one to set aside the judgment theretofore rendered against him in said cause, and the other to withdraw the order of sale which had been issued upon said judgment. In each of said motions it was alleged that the court had no jurisdiction to entertain such suit, to render judgment or to order the property attached to be sold to satisfy the same; that the record in the cause showed that the plaintiff was not a judgment creditor of said insolvent corporation; that the same had not been dissolved by the expiration of the time limit in its charter or by a judgment of dissolution, and that the plaintiff had a special security for the payment of his debts, which he did not allege had been exhausted; that the act of the legislature of Kansas, entitled "An act concerning private corporations," approved March 6, 1883, was unconstitutional; that the suit was prosecuted against the executor of a dead man, and under our constitution and laws the probate court of Atchison county, and not the district court, had jurisdiction; that no attachment could legally issue against the property of the defendant executor; that section 203 of the executors' and administrators' act is unconstitutional and contravenes section 6, article 3, and section 8, article 3 of the constitution of the State of Kansas; and also violates sections 1 and 2 of article 4, and the 14th amendment of the Constitution of the United States, and section 27 of the act of Congress creating the Territory of Kansas; that in rendering said judgment said district court did not give full faith and credit to the public acts and judicial proceedings of the orphans' court of Union county, New Jersey, according to the requirements of the Constitution of the United States, article 4, section 1, and did not accord to the defendant, a citizen of New Jersey, the privileges and immunities of an executor resident in this State, contrary to the United States Constitution, section 4, article 2, and enforced the said section 203 of the executors' and administrators' act of this State, which abridged the privileges of the defendant, and his immunity from suit by attachment and deprived him of his property without due process of law, and denied him the equal protection of the law, contrary to the 14th amendment of the Constitution of the United States.

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These motions were heard together, and overruled. An exception was taken, and, upon a case-made, the order of the court in overruling said motions is brought here for review.

157

REUBEN M. MANLEY, as Executor, etc.,
v.
RICHARD A. PARK. } No. 11833.

Error from Atchison county. Affirmed.

The opinion of the court was delivered by ELLIS, *J.*:

Although several assignments of error were made herein and argued at great length by the learned counsel for the plaintiff in error, the

one question necessary for us to consider in the present status of this case is, was the judgment of December 13, 1897, absolutely void. If it was null and void, it could properly be attacked by the motions, the overruling of which constitutes the grievance now complained of, and if not so void it stands as a final determination of all the matters in controversy in the action in which it was rendered, and as to those matters it is *res adjudicata*. The mere announcement that the defendant voluntarily appeared and plead to the action will suffice to dispose of and determine in the affirmative the question as to whether the court below had jurisdiction of the person of the non-resident defendant. There remains then for our consideration the question as to whether such judgment was void for want of jurisdiction in the court of the subject-matter, or because it was not within the powers granted to the court by the laws of its organization.

The constitution of this State, article 3, section 6, provides that,

"The district courts shall have such jurisdiction in their respective districts as may be provided by law."

And by statute it is enacted that:

"There shall be in each county organized for judicial purposes, a district court, which shall be a court of record, and shall have *general original jurisdiction* of all matters both *civil* and *criminal*, (not otherwise provided by law.)

158 Section 1, chapter 85, General Statutes of 1897.

Surely this grant of power is broad enough to confer jurisdiction, except as to those matters only which by statute are withheld or ceded to another tribunal.

It will be noted that the present case was an action for the recovery of money upon a contractual liability against a foreign executor, and specific authority for the bringing of such an action may be found in section 147, chapter 107, General Statutes of 1897, which is as follows:—

"An executor or administrator duly appointed in any other State or country may sue or be sued *in any court* in this State, in his capacity of executor or administrator, in like manner and under like restrictions as a non-resident may sue or be sued."

In the case of Cady *v.* Bard, *et al.* 21 Kan. 479, the statute just quoted was construed by this court, and in the opinion Mr. Justice Brewer said:—

"Now, a non-resident may be sued in an action on a contract for the recovery of money, and service may be obtained by attachment and publication. In 'like manner' may a foreign executor or administrator be sued. That a State has jurisdiction over all property within its territorial limits, and may subject it to the process of its courts, will not be doubted. Whether a judgment rendered upon a service by attachment and publication has any extraterritorial force, or binds anything other than the specific property attached, we need not inquire. It is enough for the purposes of this case to hold that jurisdiction may be acquired, so far as may be necessary, to cut off all interest of the non-resident defendant in the property attached."

In the syllabus in that case it was laid down as the law of this State that under the statutory provision just quoted,

"A foreign executor or administrator may be sued in an action on a contract for the recovery of money, and service obtained by attachment and publication." (See also, Denny *v.* Faulkner, 22 Kan. 96; Dunlap *v.* McFarland, 25 Kan. 490; Donifelser *v.* Heyl, 7 Kan. App. 606, affirmed 59 Kan. 779.)

The statutes conferring jurisdiction upon the probate courts of this State do not nullify the provisions of the statute permitting actions to be brought by and against foreign executors and administrators, in the same manner as they may be brought by and against non-residents of the State. It would be idle to cite the various provisions of our constitution and laws relating to the jurisdiction of probate courts in the care of the estates of deceased persons, minors and persons of unsound mind, for, in the view we have taken
159 of this case, it is only necessary for us to determine the question as to whether, under the constitution and laws of this State, the district court of Atchison county had jurisdiction to entertain a suit, like the present, commenced against a non-resident executor by attachment and publication notice.

If a court should assume to act in a case over which the law did not give it authority, the judgment would be altogether void. This would be true whether objection be made to the exercise of unwarranted power on the part of said court or not. But the court "has jurisdiction of any subject matter, if, by the law of its organization, it has authority to take cognizance of, try and determine cases of that description." (Cooley Const. Lim. (6*h*th ed.) 491.)

In Morrow *v.* Weed, 4 Iowa, 77, 89, the court said:—

"The question, then, is, when does jurisdiction arise, *or what gives* jurisdiction? The answer is; first, the law; second, a petition, (or whatever stands in its place); third, notice, (when such is required)."

"It is the character of the suit on the part of a plaintiff which gives the right of jurisdiction to a court, so far as the subject-matter is concerned; and not of the defense thereto. Where a statute grants a right, jurisdiction attaches, even if another statute may make a certain circumstance a bar to that right, if pleaded by the defendant." (Wells on Jurisdiction, sec. 4.)

Another author on the same subject says:—

"Jurisdiction over the subject-matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind and character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court it which it is pending, because of some inherent facts which exist and may be developed during the trial." (Brown on Jurisdiction, sec. 1*a*.)

"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred." (Cooper *v.* Reynolds, 77 U. S. 308, 316.)

"Jurisdiction of the subject-matter is the court's jurisdiction of
ie cases of a *general class* to which any particular case and the re-
ef sought therein may belong." (12 Encyc. Pl. & Pr. 121, n. 1.
nd cases cited. See also U. S. *v.* Arredondo and others, 6 Pet. 691;
ithian *v.* Monks, 43 Mo. 502; Hunt *v.* Hunt, 72 N. Y. 229; Cook
Bangs, 31 Fed. 640; Florentine *v.* Barton, 69 U. S. 210; Hallock
Downing, 69 N. Y. 240.)

In Donifelser *v.* Heyl, *supra*, which was an action brought by a
oreign executor by attachment against a foreign executrix, on which
udgment was rendered for the plaintiff and the real property at-
tached ordered to be sold to satisfy such judgment, the court,
60 on application of the defendant, opened the judgment and
permitted the foreign executrix to come in and defend, and
fter a trial the court entered an ordinary judgment in favor of the
laintiff and against the defendant as executrix, but refused to
rder the property sold which had been attached. In commenting
pon the statute quoted above, section 147, chapter 107, General
tatutes of 1897, the court said:—

"To hold the statute not broad enough to cover the present case
s to hold it to be so narrow that it covers nothing. What was the
ain to the plaintiff below in obtaining the judgment finally awarded
im? He could not collect it by the ordinary post judgment pro-
ess of the court which rendered it. He would be obliged to wait
oping that something might come to him through the proceedings
f the probate court of Cook county, Illinois."

And in the present case, to hold that the foreign executor might
e sued, that an attachment might issue under which the land
ight be seized, that a service by publication as in ordinary cases
ight be made with like effect, and then to say that after judgment
ad been rendered the particular property seized could not be sold
y the order of the court, would be to decide that the statute itself
as meaningless and afforded to the plaintiff no redress or benefit.

A court acquires jurisdiction of the *res* where there is a substan-
ial compliance with the provisions of law in the bringing of a suit
y attachment; where the writ is issued and the property is actually
eized thereunder, and where such notice as is requisite be given
he defendant.

"Whenever specific property is subject to seizure and sale for the
atisfaction of particular demands, courts of the State where the
roperty is situated have undoubted jurisdiction without reference
o the residence of the party." (12 Encyc. Pl. & Pr. 145, and cases
ited.)

"The rule is that when a party out of the jurisdiction has prop-
rty within the jurisdiction of the court, the jurisdiction of the cause
ay be acquired by issuance of process against and seizure of such
roperty, even though the defendant cannot be served with personal
rocess, but the jurisdiction thus acquired will merely authorize the
scertainment of the obligation and subjection of the property to
he extent thereof if so much is seized, and will not support a per-
onal judgment in the absence of personal service." (*Id.* p. 143, and
ases cited.)

"In proceedings *in rem*, as well as in those which are in the nature of proceedings *in rem*, actual notice to parties is not necessary, but constructive notice, either generally to the whole world where the proceeding is purely *in rem*, or specially to the parties interested where the proceeding is *quasi in rem*, is sufficient." (*Id.* p. 146, and cases cited.)

"That a State has jurisdiction over all property within its territorial limits and may subject it to the process of its courts will not be doubted." (Cady *v.* Bard, *supra*. Also Page Ex'r of
161 Miller *v.* U. S. 78 U. S. 268, 294; The Rio Grande, 90 U. S. 458, 3rd syl.; Arndt *v.* Griggs, 134 U. S. 316.)

It is proper for a court in determining the validity of a statute to take into consideration the question as to whether it has long been following and acquiesced in, without a question as to its constitutionality being raised. In the case at bar, for more than thirty years our statute providing that foreign executors may sue and be sued in any court in this State, in like manner as suits may be brought by and against non-residents generally, has been in force, has been acted upon and construed by our courts, and never before, so far as we are able to ascertain, have its provisions been challenged as repugnant to our own constitution, or to that of the Constitution of the United States. Indeed, the validity of this section was expressly recognized in Eells *v.* Holder, 2 McCrary, 622. As to all of the objections raised in this case, which we have not discussed, it may be said that they must be treated as having been passed upon by the court below. If the court had jurisdiction to render judgment at all, its judgment rendered December 13th, 1897, must be regarded as final, and whether right or wrong it must be upheld. The power to determine and decide a case includes the power to decide it wrong as well as to decide it right. And in this case it must be held that the court below passed upon, and upheld the several statutes not cited in this opinion, which are assailed by counsel for the plaintiff in error, as unconstitutional. We do not discuss them because they do not relate to the jurisdiction of the district court over the parties or the subject-matter herein.

In Florentine *v.* Barton, 69 U. S. *supra*, the validity of an Illinois statute and judgment therein was involved, and the court held that:—

"Whether the decision be correct or otherwise, its judgment, until reversed, is binding on every other court."

Also:—

"The question raised as to the constitutional power of the legislature of Illinois to pass the private acts modifying the general course of proceedings in similar cases, was necessarily decided by the circuit court of the State, under whose order and supervision this sale was made."

162 In Board of Children's Guardians, etc. *v.* Shutter, 139 Ind. 263; S. C. 31 L. R. A. 740, the court said:—

"A judgment founded on a statutory bond, depending for its validity wholly on the statute, which is unconstitutional and void, is not void, and cannot be collaterally impeached because the statute is unconstitutional and void."

Thereupon the court disposed of the case, as it said, "without de-
ling anything whatever about the constitutionality of the statute
ably and exhaustively discussed." (See also, C. & A. Rld. Co. *v.*
iggins Ferry Co. 108, U. S. 18.)

In *Ex parte* Tobias Watkins, 3 Peters, 193, 202, the court said of
e judgment rendered by a court having jurisdiction:—

"A judgment, in its nature, concludes the subject on which it is
dered, and pronounces the law of the case. The judgment of a
urt of record whose jurisdiction is final, is as conclusive on all the
rld as the judgment of this court would be. It is as conclusive on
is court as it is on other courts."

"When any tribunal has jurisdiction of the subject-matter of and
e parties to any controversy, and renders a judgment thereon, such
dgment is conclusive between the parties. If the rulings of that
bunal are adverse to one party, and wrong, he should seek to cor-
et that judgment by error or appeal. Failing to do that, he is es-
pped from further inquiry." (Anthony *v.* Halderman, 7 Kan. 50,
.)

"The estoppel is not confined to the judgment, but extends to all
ets involved in it as necessary steps or the ground-work upon which
must have been founded." (Burlen *v.* Shannon, 99 Mass. 200, 203;
oted and approved in U. S. *v.* Co. Ct. Knox Co. 122 U. S. 306.)

Even though the petition was defective,

"If the petition sets forth facts sufficient to challenge the attention
the court with regard to its merits or authorize the court to de-
erate with respect thereto, then the judgment subsequently ren-
red upon it is not void, but at most is only voidable, and it cannot
en then be held to be voidable except when it is attacked directly
d in a direct proceeding." (Head *v.* Daniels, 38 Kan. 1, 6; Greer
Adams, 6 Kan. 203; Rowe *v.* Palmer, 29 Kan. 337; Entreken *v.*
oward, 16 Kan. 531; Bryan *v.* Bander, 23 Kan. 95.)

It follows that if, as to any of the rulings and decisions made by
e court below upon matters not directly involving its power and
risdiction to entertain the suit and render judgment therein, the
fendant below was aggrieved, he had but one remedy therefor—
at of appeal within the time and in the manner provided by law.
The fact that the appeal in this case was dismissed does not change
e result, and the judgment must be regarded as final after the ex-
piration of the time in which an appeal is allowed by law.
3 (Wells Res. Adj. sec. 9.)

We conclude, therefore, that the court below was invested
th the power to hear and determine this case; that it had juris-
ction of the parties and the subject-matter, and that its judgment
dered December 13, 1897, is final and conclusive.

For which reason the decision and judgment of the court below in
erruling the aforesaid motions, must be affirmed.

All the justices concurring.

A true copy.

Attest: ——— ———,
Clerk Supreme Court.

7—120

164 And afterward on the 4th day of May, 1901, there was filed in the office of the clerk of the supreme court of the State of Kansas, a petition for a writ of error, which with the endorsements thereon is in the words and figures as follows, to wit:

165 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error.
} No. 11833.

Petition for Writ of Error.

Now comes Reuben M. Manley, executor of the estate of George Manley, deceased, plaintiff in error herein, and says that on or about the 8th day of March, A. D. 1901, this court rendered and entered judgment herein, in favor of the defendant in error, Richard A. Park, and against this plaintiff in error, Reuben M. Manley, executor of the estate of George Manley, deceased, in which judgment and the proceedings had prior thereto in said cause certain errors were committed, to the prejudice of this plaintiff in error, Reuben M. Manley, executor of the estate of George Manley, deceased; all of which will more in detail appear from the assignment of errors which is filed with this petition for a writ of error.

Wherefore, this plaintiff in error, Reuben M. Manley, executor of the estate of George Manley deceased, prays that a writ of error may be allowed in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the records, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

L. F. BIRD,
Attorney for Reuben M. Manley, Executor of the Estate of George Manley, Deceased, Plaintiff in Error.

166 [Endorsed:] No. 11,833. Reuben M. Manley, executor, vs. Richard A. Park. Petition for writ of error. Filed May 4 1901 D. A. Valentine, clerk supreme court. L. F. Bird, att'y for plaintiff in error, Reuben M. Manley, executor.

167 Be it further remembered, that on the said 4th day of May, A. D. 1901, the same being one of the regular judicial days of the January, 1901 term of the supreme court of the State of Kansas, before the Honorable Frank Doster, chief justice of the said court at his chambers in the city of Topeka, the following proceeding was had and remains of record as follows, to wit:

168 *Journal Entry Allowing Writ of Error.*

REUBEN M. MANLEY, Ex'r, &c., Pl'ff in Error,
vs.
RICHARD A. PARK, Def't in Error. } 11833.

Now on this 4th day of May A. D. 1901, comes Reuben M. Manley executor of the estate of George Manley, deceased, plaintiff in error, and presents to the undersigned, chief justice of the supreme court of the State of Kansas, his petition herein praying for the allowance of a writ of error in the above-entitled cause to the Supreme Court of the United States, for the correction of certain errors complained of and more fully set forth in the assignment of errors accompanying said petition for a writ of error.

Upon consideration whereof it is hereby ordered that the said petition be and the same is hereby granted, and the said writ of error allowed. The plaintiff in error thereupon produces his supersedeas bond on the said writ of error in the sum of $1000.00, with James H. Spalding as surety.

Upon consideration whereof the said bond and the sufficiency of the sureties thereon are hereby approved by me.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

169 And also on the 4th day of May A. D. 1901, there was filed in the office of the clerk of the supreme court of the State of Kansas a writ of error which with the endorsements thereon is in words and figures as follows, to wit:

170 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 11833.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme judicial court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court of the State of Kansas, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Reuben M. Manley, executor of the estate of George Manley, deceased, plaintiff in error, and Richard A. Park, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under,

the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of — commission held under the United States, and the decision was against the title, right, privilege, and exemption specially set up or claimed under such *claim* of said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of said Reuben M. Manley, executor of the estate of George Manley, deceased, as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
171 States, together with this writ, so that you have the same at Washington on a day not exceeding thirty days from the 4th day May, 1901, in the office of the clerk of the said Supreme Court, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 4 day of May in the year of our Lord one thousand nine hundred and one.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARTT,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed this May 4", 1901.

FRANK DOSTER,
Chief Justice Kansas.

172 [Endorsed:] No. 11,833. Reuben M. Manley, executor, etc. *vs.* Richard A. Park. Writ of error. Filed May 4 1901 D. A. Valentine, clerk supreme court.

173 And also on the 4th day of May A. D. 1901, there was filed in the office of the clerk of the supreme court of the State of Kansas, an assignment of errors, which with the endorsements thereon is in words and figures as follows, to wit:

174 The Supreme Court of the United States, of October Term, in the Year of Our Lord One Thousand Nine Hundred and One.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. —.

Assignment of Errors.

Reuben M. Manley, executor of the estate of George Manley, deceased, plaintiff in error, in connection with his petition for a writ of error, says that in the record and proceedings in said cause there is manifest error in the particulars following, to wit:

1. That Richard A. Park, as plaintiff, commenced his action against William H. Risk, executor of the estate of George Manley, deceased, as defendant, in the district court of Atchison county, Kansas, by attachment and on the ground that the defendant was a non-resident of the State of Kansas; that Reuben M. Manley, succeeded the said William H. Risk, as executor of said estate, and said action was revived against him; that on December 13, 1897, judgment was rendered in said action in favor of the plaintiff therein, Richard A. Park, and against the defendant therein, Reuben M. Manley, executor of the estate of George Manley, deceased, for $2,463.07, with interest at the rate of six per cent. per annum and costs of suit, and certain real property of said defendant therein so attached was ordered sold to satisfy said judgment and costs; that on May 31, 1900, the defendant in said suit, Reuben M. Manley, executor of the estate of George Manley, deceased, filed his motion in the said district court of Atchison county, Kansas, to set aside the said judgment, and also his motion to set aside the order and judgment of said court ordering the property attached in said action to be sold to satisfy said judgment, for that the said district court of Atchison county, Kansas, had no jurisdiction to entertain said suit, or to render judgment therein, or
175 to order the property attached therein to be sold to satisfy said judgment; that said action was a suit against the executor of the estate of a dead man, and under the constitution and laws of the State of Kansas, the probate court of Atchison county, Kansas, and not the district court of Atchison county, Kansas, had jurisdiction to entertain the claim of the plaintiff; that no attachment could legally issue against the property of the defendant executor, and the said district court of Atchison county, Kansas, in rendering said judgment, and in ordering the sale of said attached property did not give full faith and credit to the public acts and judicial proceedings of the surrogate of the orphans' court of Union county, New Jersey, where the estate of George Manley, deceased, was being administered, and did not accord to the defendant, a citizen of the State of New Jersey, all the privileges and immunities

of an executor resident in the State of Kansas, as guaranteed by art. 4, secs. 1 and 2 of the Constitution of the United States, but abridged the privileges of the defendant and deprived him of his property without due process of law, guaranteed him by the fourteenth amendment to the Constitution of the United States. That on June 2, 1900, said motions were heard and were each overruled by the district court of Atchison county, Kansas, and by due proceedings therefor said matter and cause were taken on error to the supreme court of the State of Kansas, and on March 9, 1901, said supreme court of the State of Kansas, by its decision and judgment affirmed the decision and judgment of the said district court of Atchison county, Kansas. And the supreme court of the State of Kansas erred in affirming the decision and judgment of the district court of Atchison county, Kansas, in refusing to set aside said judgment.

II. The supreme court of the State of Kansas erred in affirming the decision and judgment of the district court of Atchison county, Kansas, in refusing to set aside the said order and judgment ordering the property, attached in said action to be sold to satisfy said judgment.

III. The supreme court of the State of Kansas, erred in that it did not give full faith and credit to the public acts and judicial proceedings of the surrogate of the orphans' court of Union county, New Jersey, where the estate of George Manley, deceased, was being administered, as required by section 1 of art. 4 of the Con-
176 stitution of the United States, in that it decided that the property of the estate of George Manley, deceased, and of Reuben M. Manley, the executor of said estate could be attached in an action for debt brought in the district court of Atchison county, Kansas, against the executor of said estate by attachment, and that said property so, attached could be sold to satisfy said judgment.

IV. The supreme court of the State of Kansas erred in that it did not accord the defendant, in said suit, the plaintiff in error herein, a citizen of the State of New Jersey, all of the privileges and immunities of an executor resident in the State of Kansas, as guaranteed by section 2 of art. 4, of the Constitution of the United States, in that it decided that the property of the estate of George Manley, deceased, and of Reuben M. Manley, the executor of said estate, could be attached in an action for debt brought in the district court of Atchison county, Kansas, against the executor of said estate, and that said property so attached could be sold to satisfy said judgment, when the property of an executor, resident in the State of Kansas, was not subject to attachment process and could not be ordered sold to satisfy a judgment for debt by execution or order of sale on proceedings by attachment, and discriminated against him in that regard solely because he was a non-resident of the State of Kansas.

V. The supreme court of the State of Kansas erred in that it enforced a law or laws of the State of Kansas, which abridged the privileges and immunities of the defendant in said suit, the plaintiff in error herein, and citizen of the United States, and deprived him

of his property without due process of law, and denied him the equal protection of the laws, guaranteed him by the fourteenth amendment to the Constitution of the United States, in that it decided that the property of the estate of George Manley, deceased, and of Reuben M. Manley, the executor of said estate, could be attached in an action for debt brought in the district court of Atchison county, Kansas, against the executor of said estate, and that the property so attached could be ordered sold to satisfy said judgment, when the property of an executor, resident in the State of Kansas, was not subject to attachment process and could not be ordered sold to satisfy a judgment for debt by execution or
177 order of sale on proceedings by attachment, and discriminated against him in that regard solely because he was a non-resident of the State of Kansas.

VI. The supreme court of the State of Kansas erred, in that it decided that the rights of the defendant in said suit, the plaintiff in error herein, were concluded by the judgment of the district court of Atchison county, Kansas, rendered on December 13, 1897, because said judgment was void on its face for the reason that it was rendered against an executor of an estate, and because the property of a dead man was ordered sold to satisfy an ordinary judgment in attachment proceedings rendered against the executor of said estate, and said judgment was rendered and order of sale of attached property made solely because the executor of said dead man was a non-resident of the State of Kansas, and said judgment and order of sale of attached property would have been void if given and made against an executor resident of the State of Kansas, thereby depriving said non-resident executor of his privilege of administering said estate under the orders of the surrogate of the orphans' court of Union county, New Jersey, and of the probate court of Atchison county, Kansas, and of his immunity from suits in the district court of Atchison county, Kansas, by attachment, and depriving him of his property without due process of law and denying him the equal protection of the laws.

And the said Reuben M. Manley, executor of the estate of George Manley, deceased, plaintiff in error, prays that said judgment of the supreme court of the State of Kansas, may be reversed, annulled, and altogether held for naught, and that the plaintiff in error be restored to all things which he hath lost by occasion of said judgment, and for costs of suit.

L. F. BIRD,
Attorney for Plaintiff in Error.

178 [Endorsed:] 11833. Reuben M. Manley, executor &c *vs.* Richard A. Park. Assignment of errors. Filed May 4 1901 D. A. Valentine clerk supreme court. L. F. Bird att'y for plaintiff in error.

179 And also on the same day there was filed in the office of the clerk of the supreme court of the State of Kansas a supersedeas bond which with the approval thereof and the endorsements thereon is in words and figures as follows, to wit:

180 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 11833.

Supersedeas Bond.

Know all men by these presents that we, Reuben M. Manley, executor of the estate of George Manley, deceased, of the county of Union, State of New Jersey, and James A. Spalding of the county of Atchison, State of Kansas, as surety, are held and firmly bound unto Richard A. Park, of the county of Atchison, State of Kansas, in the full and just sum of one thousand dollars, to be paid to the said Richard A. Park, his heirs, executors, administrators and assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our heirs, successors, executors, administrators and assigns, firmly by these presents, upon the following conditions, to wit:

Whereas on or about the 9th day of March, A. D. 1901, in a suit depending in the supreme court of the State of Kansas, between said Reuben M. Manley, executor of the estate of George Manley, deceased, plaintiff in error, and Richard A. Park, defendant in error, judgment was rendered against said plaintiff in error, affirming the decision and judgment of the district court of Atchison county, Kansas, and

Whereas, the said plaintiff in error, has obtained a writ of error in the said court to reverse the judgment in the aforesaid suit, and a citation to the said defendant in error, citing and admonishing *them* to be and appear in the Supreme Court of the United States, at the city of Washington;

Now, the condition of the above obligation is such that if the said Reuben M. Manley, executor of the estate of George Manley,
181 deceased, shall prosecute said writ of error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, otherwise to remain in full force and effect.

Signed with our hands and dated this 4 day of May, 1901.

REUBEN M. MANLEY,
Executor, &c.,
By L. F. BIRD, *His Attorney.*
J. A. SPALDING.

The above bond approved by me this 4th day of May, A. D. 1901.

FRANK DOSTER,
Chief Justice.

STATE OF KANSAS, } ss:
Shawnee County, }

James A. Spalding, of lawful age, on his oath deposes and says: That he is a citizen of the State of Kansas, and resides in Atchison county in said State. That he is worth in real estate in Atchison county, Kansas, the full sum of $9,000.00 over and above all his debts, liabilities and exemptions, and that he is worth in real and personal property in said Atchison county, Kansas, the full sum of twelve thousand dollars.

J. A. SPALDING.

Subscribed and sworn to before me this 4th day of May A. D. 1901.

H. L. ARMSTRONG,
[SEAL.] *Deputy Clerk Supreme Court.*

Endorsed on back: Reuben M. Manley, executor *vs.* Richard A. Park. No. 11,833 Supersedeas bond. Filed May 4 1901 D. A. Valentine clerk sup. court.

182 And afterwards, on the 23rd day of May, A. D. 1901 there was filed in the office of the clerk of the supreme court of the State of Kansas a citation which together with the proof of the service of the same and the endorsements thereon is in the words and figures as follows, to wit:

183 UNITED STATES OF AMERICA, *ss:*

To Richard A. Park:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Kansas, in a cause wherein Reuben M. Manley, executor of the estate of George Manley, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4" day of May, A. D. 1901.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

Service of the foregoing citation hereby acknowledged to the same effect as if duly served by an officer this 7" day of May A. D. 1901.

H. M. JACKSON,
JACKSON & JACKSON,
Attorneys for Richard A. Park, Defendant in Error.

[Endorsed:] No. 11,833. Reuben M. Manley, executor, *vs.* Richard A. Park. Citation. Filed May 23, 1901. D. A. Valentine, clerk supreme court.

184 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 11833.

I, D. A. Valentine, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, true, correct and complete transcript of all pleading- and papers filed and all proceedings had in the above-entitled cause, as the same now remain on file and appear of record in my office.

Witness, my hand and the seal of the supreme court of the State of Kansas, hereto affixed at my office in Topeka, this 23d day of May, A. D. 1901.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

185 In the Supreme Court of the State of Kansas.

REUBEN M. MANLEY, Executor of the Estate of George Manley, Deceased, Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 11833.

Pursuant to a writ of error issued out of the United States circuit court for the district of Kansas on the 4th day of May A. D. 1901, and directed to the supreme court of the State of Kansas, and in obedience to the command thereof, I, D. A. Valentine, clerk of the supreme court of the State of Kansas, do herewith transmit to the Supreme Court of the United States a duly certified transcript of the record, and proceedings of this court, in the within-entitled cause, with all things concerning the same.

Seal Supreme Court, State of Kansas.

Witness, my hand and the seal of the supreme court of the State of Kansas, hereto affixed at my office in Topeka, this 1st day of June A. D. 1901.

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

186 In the Supreme Court of the United States, October Term, 1902.

REUBEN M. MANLEY, Ex'r, etc., Plaintiff in Error,
vs.
RICHARD A. PARK, Defendant in Error. } No. 120.

Stipulation.

It is hereby stipulated and agreed that in printing the record in the above-entitled action, the "transcript of the record," that is, such part of the record from the supreme court of the State of Kansas as was filed in said court June 25th and which ends with the certificate of J. N. Cox, clerk of the district court of Atchison county, Kansas of date June 22nd, 1900, may be omitted, leaving the part to be printed the petition in error filed in the supreme court of the State of Kansas June 25th, 1900 and case-made filed in the supreme court of the State of Kansas August 8th, 1900.

L. F. BIRD,
C. F. HUTCHINGS,
Attorneys for Plaintiff in Error.
JACKSON & JACKSON,
Attorneys for Defendant in Error.
HORACE M. JACKSON,
Of Counsel.

[Endorsed:] Reuben M. Manley ex'r, etc., pl'ff in error, *vs.* Richard A. Park, def't in error. Stipulation.

187 [Endorsed:] File No. 18,207. Supreme Court U. S. October term, 1902. Term No. 120. Reuben M. Manley, executor of George Manley, dec'd, P. E. *vs.* Richard A. Park. Stipulation of counsel omitting part of record in printing. Filed July 11", 1902.

Endorsed on cover: File No. 18,207. Kansas supreme court. Term No. 120. Reuben M. Manley executor of the estate of George Manley, deceased, plaintiff in error, *vs.* Richard A. Park. Filed June 25", 1901.